

Senior Investigative Counsel. Committee on Government Reform, U.S. House of Representatives. Washington, D.C. January 1997-February 1998; June 1998-September 1999.

- ✓ Developed hearing series entitled "National Problems, Local Solutions: Federalism at Work" to highlight innovative and successful reforms at the state and local levels, including: "Fighting Crime in the Trenches," featuring New York City Mayor Rudolph Giuliani, and "Tax Reform in the States."
- ✓ Interviewed Johnny Chung and played key role in hearing detailing his illegal political contributions.
- ✓ Organized, supervised and conducted the financial investigation of individuals and companies; located and interviewed witnesses; and drafted subpoenas; briefed the Speaker of the House on the findings.

Campaign Manager. Betty Dickey for Attorney General. Pine Bluff, Arkansas. February 1998-May 1998.

- ✓ Supervised day-to-day operations.

Associate Independent Counsel. U.S. Office of Independent Counsel David M. Barrett. *In re: Henry G. Cisneros, Secretary of Housing and Urban Development.* Washington, D.C. September 1995-January 1997.

- ✓ Interviewed numerous witnesses with the F.B.I. and supervised the execution of a search warrant.
- ✓ Drafted subpoenas and pleadings and questioned witnesses before a federal grand jury.

Associate Attorney. General Litigation Section. Jones, Walker, Waechter, Poitevent, Carrere & Denegre, L.L.P. New Orleans, Louisiana. September 1994-September 1995.

- ✓ Drafted legal memoranda and pleadings and conducted depositions.

SUMMARY OF MILITARY SERVICE

Captain. Judge Advocate General's (JAG) Corps, U.S. Army Reserve. Commissioned First Lieutenant, June 1996.

- ✓ Currently serving on active duty as an Army prosecutor at Fort Campbell, Kentucky, September 2005-Present.
- ✓ Completed three training missions in Germany: Mannheim (1997); Wuerzburg (1998); and Hohenfels (2003).
- ✓ Represented the Army at seven administrative separation boards and obtained separation in all seven.
- ✓ Awarded the following medals and ribbons: Army Commendation Medal with Four Oak Leaf Clusters; Army Achievement Medal with Three Oak Leaf Clusters; Army Reserve Components Achievement Medal with Two Oak Leaf Clusters; National Defense Service Medal; Global War on Terrorism Service Medal; Armed Forces Reserve Medal with "M" Device; Army Service Ribbon; and Army Reserve Overseas Training Ribbon with "3" Device.

ACTIVITIES AND ASSOCIATIONS

Arkansas Bar. Member, admitted April 26, 1995.

Arkansas Bar Association. 1995-Present. Member, Annual Meeting Subcommittee on Technology, 2002.

The Federalist Society for Law and Public Policy Studies. 1991-Present. President, New Orleans Lawyers Chapter, February-August 1995; President, Tulane Law School Chapter, 1993-1994; Vice President, Tulane Law School Chapter, 1992-1993; Treasurer, Tulane Law School Chapter, 1991-1992.

Florence Crittenton Services, Inc. Member, Board of Directors, Little Rock, Arkansas, 2001-2002.

Louisiana State Bar Association. Admitted October 7, 1994. Currently inactive.

The Oxford Society. 1991-Present.

Pulaski County Bar Association. 2001-2002. Co-chair, Law School Liaison Committee, 2001-2002.

Reserve Officers Association. Life Member.

BIOGRAPHICAL SUMMARY

December 23, 2005

GRIFFIN, John Timothy,

Captain, Judge Advocate General's Corps, USAR

Date and Place of Birth:

Mandatory Removal Date:

Home Address:

Phone Numbers: Home Work

Civilian Occupation: Special Assistant to the President and Deputy Director, Office of Political Affairs, The White House, Washington, D.C. (currently on military leave)

Enlisted Service: None

Source and Date of Commission: Direct, 15 June 1996

Years of Commissioned Service: Over nine years

Military Schools Attended:	Year Completed:
The Judge Advocate General's School, Officer Basic Course, Phase I	1997
The Judge Advocate General's School, Officer Basic Course, Phase II (correspondence)	1998
The Judge Advocate General's School, 7 th Intel Law Course	2005
The Judge Advocate General's School, Officer Advanced Course, Phase I (correspondence)	2005
The Judge Advocate General's School, Officer Basic Course, Phase II	2006

Civilian Education:	Degrees Completed:
4 Years, High School, Magnolia, AR	Graduated 1986
4 Years, Hendrix College, Conway, AR	BA (Economics) 1990
1 Year, Oxford University, Pembroke College, Graduate School Oxford, England	1990-1991
3 Years, Tulane University School of Law, New Orleans, LA	JD 1994

U.S. Decorations/Badges:	Year Awarded:
Army Commendation Medal	2000

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BIOGRAPHICAL SUMMARY (Continued)

First Oak Leaf Cluster	2001
Second Oak Leaf Cluster	2003
Third Oak Leaf Cluster	2005
Fourth Oak Leaf Cluster	2005
Army Achievement Medal	1997
First Oak Leaf Cluster	1998
Second Oak Leaf Cluster	2001
Third Oak Leaf Cluster	2003
Army Reserve Components Achievement Medal	2000
First Oak Leaf Cluster	2005
Second Oak Leaf Cluster	2005
National Defense Service Medal	2003
Global War on Terrorism Service Medal	2005
Armed Forces Reserve Medal with "M" Device	2005
Army Service Ribbon	1997
Army Reserve Overseas Training Ribbon	1997
"2" Device	1998
"3" Device	2003

Chronological List of Appointments:

1LT	USAR	15 June 1996
CPT	USAR	20 March 2000

Chronological Record of Duty Assignments:

	From	To
USAR - Not on Active Duty		
Assistant S-3, 2d Legal Support Organization (LSO), New Orleans, Louisiana	15 Jun 96	12 Mar 97
USAR - Not on Active Duty		
Assistant S-1, 10th LSO, Upper Marlboro, Maryland . . .	13 Mar 97	18 Apr 98
USAR - Not on Active Duty		
Defense Counsel, Team 4, 2d LSO, North Little Rock, Arkansas	19 Apr 98	9 Aug 98
USAR - Not on Active Duty		
Recorder, Military Justice Team, 10th LSO, Upper Marlboro, Maryland.	10 Aug 98	4 Sept 01
USAR - Not on Active Duty		
Assistant Staff Judge Advocate (SJA), 90 th Regional Support Command (RSC), North Little Rock, Arkansas .	5 Sept 01	27 Aug 02

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BIOGRAPHICAL SUMMARY (Continued)

USAR - Not on Active Duty

Legal Assistance Attorney and Arms Room Officer,
10th LSO, Upper Marlboro, Maryland 28 Aug 02 31 Dec 03

USAR - Not on Active Duty

Deputy S-2 and Arms Room Officer, 10th LSO, Upper
Marlboro, Maryland 01 Jan 04 25 Sept 05

USAR - On Active Duty, Operation Iraqi Freedom

10th LSO, Upper Marlboro, Maryland. Attached as
Trial Counsel and Special Assistant U.S. Attorney,
Office of the Staff Judge Advocate, Headquarters and
Headquarters Company, U.S. Army Garrison, Fort
Campbell Installation, Fort Campbell, Kentucky 26 Sept 05 Present

Elston, Michael (ODAG)

From: Sampson, Kyle
Sent: Tuesday, August 15, 2006 7:00 PM
To: Elston, Michael (ODAG)
Subject: Re: Charlton

Denied.

-----Original Message-----

From: Elston, Michael (ODAG)
To: Sampson, Kyle
Sent: Tue Aug 15 18:51:44 2006
Subject: Charlton

In the "you won't believe this category," Paul Charlton would like a few minutes of the AG's time. I explained that he had already been given extensive, unusual process and that I did not think that it was a good idea for him to press this, but he insisted on me making the request.

Your thoughts?

Elston, Michael (ODAG)

From: Elston, Michael (ODAG)
Sent: Wednesday, August 16, 2006 10:17 AM
To: Charlton, Paul (USAAZ)

Paul:

The AG has declined your invitation to speak further about the case. Please file the notice.

Thanks,
Mike

Michael J. Elston
Chief of Staff and Counselor
to the Deputy Attorney General
950 Pennsylvania Avenue, N.W., Room 4210
Washington, D.C. 20530
(202) 307-2090
(202) 514-9368 (fax)

Elston, Michael (ODAG)

From: Meyer, Joan E (ODAG)
Sent: Wednesday, August 16, 2006 10:21 AM
To: Elston, Michael (ODAG)
Subject: (2Qs) NDCA Diaz case - Refusal to do the capital portion of case - has that been cleared up?
Was Charleton notified he had to file this week?

Joan E. Meyer
Senior Counsel
Office of the Deputy Attorney General
950 Pennsylvania Avenue, N.W.
Room 4129
Washington DC 20530
(202) 307-2510 / (202) 616-1239 (fax)

Elston, Michael (ODAG)

From: Friedrich, Matthew
Sent: Wednesday, August 30, 2006 8:10 AM
To: Elston, Michael (ODAG)
Subject: RE: Meeting with BW

Mike this is FYI. Need to discuss...

From: Ward, Brent
Sent: Tuesday, August 29, 2006 1:34 PM
To: Friedrich, Matthew
Subject: Meeting with BW

Matt,

For some time I have wanted to meet with you and/or Alice about some concerns I have. Perhaps it would help in getting a meeting set up to give you a heads-up about what some of those concerns are.

1. If we can't resolve it soon, the difficulty of getting USA cooperation in key districts is going lead to a showdown with the FBI. Once the FBI realized that CDCA straight-armed us on our Orange County case (which has been hanging for 4-5 months) and once the WFO SAC and I sat in a meeting with Paul Charlton in Phoenix and heard him thumb his nose at us, the Bureau knew this obscenity initiative could be heading for disaster. That put them in defensive mode. They are now doing only a very minimal amount of spade work on a case before sending me a "60-day letter" giving me 60 days to secure USA cooperation to prosecute or the case will be closed. These 60-day letters are now piling up. I have copied below an email I sent to Matt Lewis earlier today, along with an email exchange between the Las Vegas U.S. Attorney and me, to give you more insight into what I am talking about.

Matt,

This troubling email exchange is one of the things I would like to urgently discuss with you. It is of course ridiculous in a way to take an entourage of people out to LV in a losing cause. The only justification is to "make a record" for the purpose of engaging people in the Department at a higher level to turn this around (in my opinion it will take a call from the AG himself). This ought to be done now. It would obviate the need for this trip altogether.

For the FBI people to go out to LV and sit and listen to the lame excuses of a defiant U.S. Attorney is only going to move this whole enterprise closer to catastrophe. The Bureau is positioning itself so that it can point the finger at DOJ and say, "See, we investigated this case and DOJ couldn't find anyone to prosecute it." It just don't want to be set up like that.

We need to talk about some way to head this off. It is happening with regularity in the districts that are key to our strategy of hitting the producers on their own turf. Apparently neither Alice nor the DAG has been able to overcome the objections of these U.S. Attorneys. Either we hit the big producers head on and on their own turf, or we give up on these districts and work the producers derivatively in other, more welcoming districts. In the latter case the impediment is that the FBI is still loath to work a case against a bricks and mortar outfit, which is where we would need to start (unless we begin with a contrived buy/bust using the Internet), even if the intention is to roll producers and distributors into the case. If we are going to give up on the key districts and go after a derivative strategy, the front office will need to become involved in the decision. The FBI is too locked into the key district approach to be dissuaded by me.

Brent

DAG000000507

From: Bogden, Daniel (USANV) [mailto:Daniel.Bogden@usdoj.gov]
Sent: Monday, August 28, 2006 5:13 PM
To: Ward, Brent
Cc: Buzzelli, Matthew; Myhre, Steven (USANV)
Subject: RE: Obscenity Task Force Meeting

That is fine. I still am a bit surprised, however, at the extreme number of personnel traveling to Las Vegas for such a case presentation. That is highly unusual. I just want to again reiterate my position, though, as to our severe manning and personnel shortages in the USAO, District of Nevada. During our telephone conversation, you made a comment about this being some type of 50/50 split on manning and personnel, if our district were to accept such a case for prosecution. I told you then that such an arrangement is highly unlikely as we simply do not have available manning or personnel for such a working arrangement. Since our telephone conversation, our personnel situation has become more critical. We will be willing to meet and hear you, Mr. Buzzelli, Mr. Rodriguez, Ms. McGravy and whoever FBI SAC Steve Martinez designates from his FBI, Las Vegas office, out and review your case presentation but we have very limited to no capacity to undertake such a prosecutive matter with what we currently have going on in our office and district.

From: Ward, Brent
Sent: Monday, August 28, 2006 1:48 PM
To: Bogden, Daniel (USANV)
Cc: Buzzelli, Matthew; Hyman, Tracy (USANV)
Subject: Obscenity Task Force Meeting

Dan,
 I appreciate the opportunity to meet with you at 1 p.m. on Wednesday, September 6, 2006 in your office to discuss a case we wish to present to you.

As of now, I will be accompanied by Matthew Buzzelli, a Trial Attorney on the Obscenity Prosecution Task Force, Diego Rodriguez, acting SAC of the Washington, D.C. Field Office of the FBI, and Angela McGravy, an FBI special agent assigned to the FBI's Adult Obscenity Squad, which is attached to the Washington, D.C. Field Office. I believe we will also be joined by a representative from the Las Vegas Field Office.

We look forward to seeing you on the 6th.

Thank you.

Brent

2. It has now been more than 10 months since I arrived here. In that time two cases have been indicted. Only one of them was initiated by the FBI. In light of this the Task Force would have to be considered a failure so far. I would like to discuss with you the reasons why I believe this is happening. There are several, but a key reason is that the FBI's squad is ineffective and its strategy is not working.
3. We have reviewed the applications of approximately 75 applicants for the two positions at the Task Force (the one that will be vacated by Rick Green, when he leaves for CCIPS) and the one Alice agreed to in a meeting in her office on the 5th floor of our building about a month ago. We have interviewed approximately 15 of these applicants, all of whom have very good qualifications. The first two people we recommended, Katherine Monaghan and Dan Stigal, were interviewed by the front office. We were given the go ahead on Monaghan. She subsequently accepted a position instead in the Civil Rights Division. Then, two highly qualified new applicants, Kenneth Whitted and Andrea Larry, came to our attention and we recommended them both ahead of Stigal. They were interviewed in the front office a few weeks ago,

but I have not determined what your wishes are vis-à-vis either of them. With regard to our first choice, Ken Whitted, a preliminary decision needs to be made whether he can come aboard on a 2-year detail from the DC USAO. Once that is decided, we can either offer him the detail (which I believe he will take), or a full hire (which he may well not take). Andrea Larry is returning from vacation about now and, if the front office approves of her, I would like to call her with an offer at the same time.

4. Our whole approach to obscenity enforcement could be greatly improved, if the Task Force and the FBI squad were co-located. Some of the impediments that have hindered the effectiveness of the squad could be overcome, if we were in closer proximity. You are considering moving the Task Force anyway, and I think the success of the Task Force may hinge on turning it into a real task force by putting us together with the people we ought to be working with on a daily basis. I would obviously rather see the squad brought into the District (even into the same building that we will be in), but if that is not possible, I would rather see us go out to their location than to 13th Street.
5. ~~Obscenity enforcement is likely to be limited in any event until the Bureau is willing to instruct field offices~~ to cooperate with USAOs in the initiation of cases. Such FO cases should be coordinated by the WFO squad (which I think would be a good use of its time). I would like to discuss with you the reasons why I believe this is essential to a winning strategy.
6. As it now stands, most people will leave the seminar next month with nothing to do. To get a case going in the vast majority of the districts it will take a USA or AUSA who is so highly motivated and so well situated that he can either persuade his SAC to initiate a case (highly unlikely), or he is willing to engage with local law enforcement to do so. There are few USAs or AUSAs who will make that effort. This can be changed, if the message is strong and urgent enough at the top. Also, I am working on a strategy that would at least provide USAs with information about possible targets in their districts in case they do have the necessary motivation to do something with it.
7. I also have some front office concerns.

These are some of the things I would like to discuss with you. I would appreciate an early opportunity to do so.

Thanks.

Brent

Elston, Michael (ODAG)

From: Connor, Mark
Sent: Thursday, August 31, 2006 6:15 PM
To: Elston, Michael (ODAG)
Cc: Scudder, Michael (ODAG)
Subject: Fw: AGAC/RIS Working Group - McNulty Letter


Importance: High

Attachments: tmp.htm; McNulty Ltr.pdf

Mike: I believe McKay is way out of line here. This document was drafted under the guise of an info sharing working for the AGAC - and it was directed to the DAG. Internal deliberations and policy recommendations should not be shared outside of the Department unless so authorized by the DAG. I don't know what McKay's motives are, but this is embarrassing and outrageous. . MAC

-----Original Message-----

From: Bernier, Colleen (USAWAW)
To: Anderson, Thomas (USAVT); DeGabrielle, Don (USATXS); Hanaway, Catherine (USAMOE); Heavican, Michael (USANE); Iglesias, David C. (USANM); Immergut, Karin (USAOR); Kubo, Ed (USAHI); Lam, Carol (USACAS); Larson, Charles (USAIAN); McDevitt, Jim A. (USAWAE); Moody, Jamison (USAE0); Perez, Paul (USAFILM); Rosenberg, Chuck (USAVAE); Suddaby, Glenn T. (USANYN); VanBokkelen, Joseph (USAINN); Whitaker, Matt (USAIAS); Wood, Lisa (USAGAS); Yang, Debra Wong (USACAC)
CC: Scudder, Michael (ODAG); Duffy, Michael (OCIO); Connor, Mark; TBetro@ncis.navy.mil <TBetro@ncis.navy.mil>; Bogden, Daniel (USANV); Brown, Lawrence (USACAE); mdorsey@ncis.navy.mil <mdorsey@ncis.navy.mil>; LFritchm@NCIS.NAVY.MIL <LFritchm@NCIS.NAVY.MIL>; kehaines@NCIS.NAVY.MIL <kehaines@NCIS.NAVY.MIL>; kimsey.t@portseattle.org <kimsey.t@portseattle.org>; Letten, James (USALAE); TGM@csnweb.com <TGM@csnweb.com>; Melson, Ken (USAVAE); O'Connor, Kevin (USACT); Scott, McGregor (USACAE); Blais, Jeanine M. (USAVT); Dibbley, Sam (USAVAE); Dougherty, Terri (USAMOE); Filosi, Deborah M. (USANYN); Glut, Martha (USANE); Golden, Lois (USANM); Holt, Gail (USAGAS); Landrum, Dolores (USAFILM); Lathers, Joann (USAFILM); Mersch, Linda (USAIAN); Pass, Penny L. (USAWAE); Porter, Brenda (USACAS); Quast, Val (USAIAS); Reyes, Carmen (USATXS); Rutledge, Sue (USAOR); vanderVoort, Joy (USAHI); Vuong, Bonnie (USACAC)
Sent: Thu Aug 31 17:47:42 2006
Subject: AGAC/RIS Working Group - McNulty Letter


McNulty Ltr.pdf
(229 KB)

Greet ngs: attached please find the final letter forwarded to Deputy Attorney General McNulty. Thank you for all your help in getting this accomplished. Please let me know if you need further assistance.

Colleen O'Reilly Bernier
Assistant to U. S. Attorney John McKay
Western District of Washington
700 Stewart Street, Suite 5220
Seattle, WA 98101-1271
Phone (206) 553-4620
Fax: (206) 553-2054
e-mail: Colleen.Bernier@usdoj.gov

<<McNulty Ltr.pdf>>



U.S. Department of Justice

*United States Attorney
Western District of Washington*

700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271

Tel: (206) 553-7970
Fax: (206) 553-2054

August 30, 2006

Honorable Paul J. McNulty
Deputy Attorney General
Main Justice Bldg.
950 Pennsylvania Ave., Room 4111
Washington, D.C. 20530

Re: AGAC/RIS Working Group Request for Meeting

Dear Mr. McNulty:

Thank you for your continuing personal leadership in the work of the AGAC Regional Law Enforcement Information Sharing Working Group. We are grateful for your recent offer to meet with us. Our purpose in writing is two-fold: first, to schedule the AGAC/RIS Working Group meeting with you; and second, to outline in advance our major concerns.

We understand you fully appreciate how critical information sharing is to the war on terror. As United States Attorney, you were the driving force behind the Norfolk-Hampton Roads LInX program. During your tenure as Chair of the Attorney General's Advisory Committee, you created the RIS Working Group. Following your example, we have continued to build information sharing among federal, state and local partners in six additional LInX sites. All of us deeply appreciate your continued support as the Department of Justice led LInX projects have been launched or expanded in Washington State, Hawaii, Corpus Christi, Jacksonville-Kings Bay, New Mexico and the National Capital Region.

We look forward to briefing you on the recent, stunning operational successes being achieved in LInX sites around the country. For example, in Norfolk-Hampton Roads, LInX was instrumental in solving the case of a Norfolk police officer who was shot and killed while on duty. In LInX Northwest, which now includes approximately 100 law enforcement partners, LInX provided critical leads in numerous cases, leading to the arrests of various murderers, rapists and thieves. LInX Northwest was critical in developing several leads that helped Seattle Police resolve a recent homicide, and was

DAG000000511

Honorable Paul J. McNulty
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used by Seattle Police in establishing the identity of Naveed Haq, the suspect in the recent tragic Jewish Federation of Seattle shootings.

In recent months, as the system has matured and more local jurisdictions contribute full text records, LInX Northwest has been heavily used by federal agents, particularly FBI, DEA and the U.S. Marshal's Service. We were recently advised that, consistent with the discussions at the Pentagon meeting, DHS will begin contributing regional and national ICE records directly to LInX Northwest under the leadership of Assistant Secretary Julie Myers. Participation by United States Attorneys in LInX and other information sharing efforts continues to grow, with the RIS Working Group now at 18 members, and additional LInX sites under serious consideration. Chief among potential expansion sites is the Los Angeles project under the leadership of United States Attorney Debra Wong Yang. Preliminary plans for this project include partnerships with Sacramento area law enforcement and California state agencies in a LInX project led by United States Attorney McGregor Scott.

Additionally, United States Attorneys in Nebraska & Iowa, St. Louis, upstate New York, Connecticut, Sacramento, Portland, Anchorage and Indiana have hosted LInX briefings. Several of these locations are in various stages of organizing regional law enforcement leadership as a prelude to LInX implementation. Serious inquiries concerning the LInX process have been made by many other U.S. Attorneys and regional law enforcement leaders in several states, including Kentucky, Oklahoma, Massachusetts, North Carolina, and South Carolina. RCMP and NCIS officials have met regularly with the Working Group Chair to explore the legal, technical and policy opportunities of sharing records through LInX with our Canadian law enforcement partners.

In short, interest in the LInX approach remains exceedingly strong, and the need for a leadership role by DOJ in building regional systems is becoming increasingly clear. The Department, under your direction and leadership is well-placed to leverage the success of LInX into an expanded, national law enforcement information sharing system. These efforts are consistent with the President's call to establish the Information Sharing Environment, the will of the Congress, and our needs in combating terror, violent crime and drugs. As the Department's "Field Commanders," we United States Attorneys believe that the LInX approach offers the best, most complete and proven path to real and effective law enforcement information sharing among federal, state and local partners.

During our upcoming meeting, we hope to ask you to do the following:

- (1) Endorse Los Angeles LInX and the \$5m offered by Deputy Secretary Of Defense Gordon England to cover first year costs of the project;

Honorable Paul J. McNulty
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- (2) Endorse the LInX approach to regional information sharing including full text record integration and support the expansion of LInX under United States Attorney leadership;
- (3) Mandate that DOJ law enforcement components share all legally shareable and unclassified law enforcement records with the LInX projects, including access controls be instituted to provide a greater level of protection for sensitive information in the shared data bases;
- (4) Direct DOJ policy and resources to support the building, funding and management of LInX projects in partnership with DOD and DHS.

We understand that you intend to share policy memoranda with our committee. We want to assure you of our interest in actively participating in this process on behalf of the AGAC. We are puzzled by the delays we are experiencing in the face of our written requests and briefings and trust you understand how urgently we seek your input and assistance. Our funding and program support through NCIS is on hold pending commitments from your office.

In many of our jurisdictions, local law enforcement leaders have delayed other projects due to their commitment to and firm belief the LInX approach offers the best way to share and obtain critical records in their own efforts to combat terrorism, gangs, violent crime and drugs. There is growing skepticism among those leaders because they see little progress on an issue all consider to be of the highest priority. DOJ policy on regional law enforcement information sharing remains unclear to our state and local partners, as well as to federal law enforcement agencies whose data we require in order to assure regional terrorism and law enforcement objectives are met. Some inside the department believe that DOJ's role is limited to providing interconnectivity among systems, and that developing regional systems that collect and integrate investigative records is not a federal responsibility. *We disagree.* Information sharing is not about technology – it is about providing the leadership commitment to insure full participation, complete data, and community-wide access to all relevant information. DOJ is uniquely positioned to take the lead in this effort.

Honorable Paul J. McNulty
August 30, 2006
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Paul, our confidence in you and your leadership of law enforcement information sharing remains firm and enthusiastic. We look forward to meeting with you at your earliest convenience. As always, we are cognizant of the tremendous demands on your time.

Sincerely,

REGIONAL LAW ENFORCEMENT INFORMATION SHARING WORKING GROUP
of the Attorney General's Advisory Committee



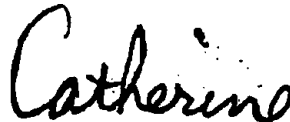
John McKay, Chair
United States Attorney
Western District of Washington



Thomas Anderson
United States Attorney
District of Vermont



Don DeGabrielle
United States Attorney
Southern District of Texas



Catherine Hanaway
United States Attorney
Eastern District of Missouri



Michael Heavican
United States Attorney
District of Nebraska



David Iglesias
United States Attorney
District of New Mexico



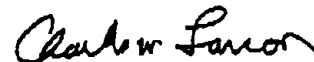
Karin Immergut
United States Attorney
District of Oregon



Ed Kubo
United States Attorney
District of Hawaii

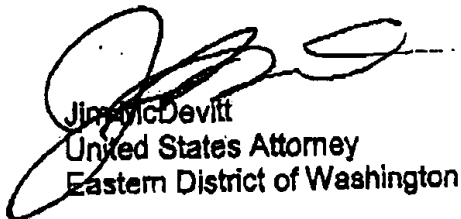


Carol Lam
United States Attorney
Southern District of California



Charles Larson
United States Attorney
Northern District of Iowa

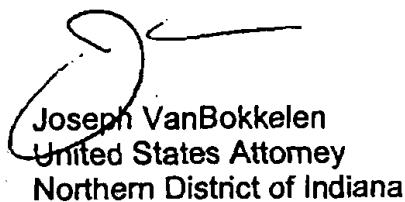
Honorable Paul J. McNulty
August 30, 2006
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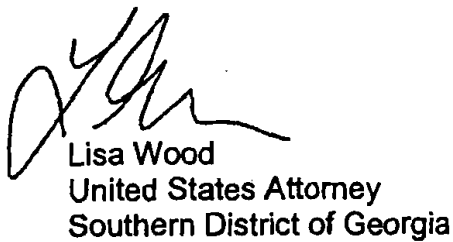
Jim McDevitt
United States Attorney
Eastern District of Washington

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Signature

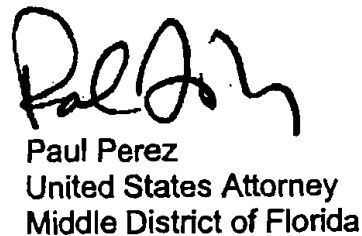
Chuck Rosenberg
United States Attorney
Eastern District of Virginia



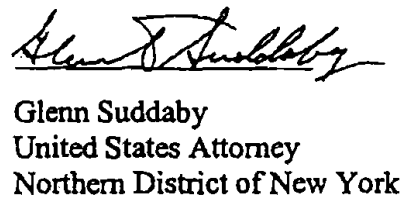
Joseph VanBokkelen
United States Attorney
Northern District of Indiana



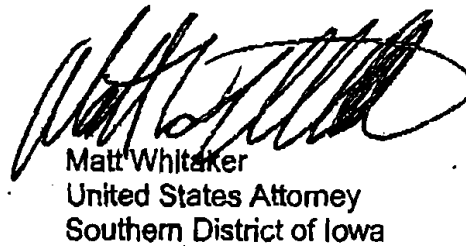
Lisa Wood
United States Attorney
Southern District of Georgia



Paul Perez
United States Attorney
Middle District of Florida



Glenn Suddaby
United States Attorney
Northern District of New York



Matt Whitaker
United States Attorney
Southern District of Iowa



Debra Wong Yang
United States Attorney
Central District of California

Elston, Michael (ODAG)

From: Elston, Michael (ODAG)
Sent: Wednesday, September 06, 2006 9:51 AM
To: Battle, Michael (USAEO)
Subject: FW: AGAC/RIS Working Group - McNulty Letter

Attachments: McNulty Ltr.pdf



McNulty Ltr.pdf
(229 KB)

-----Original Message-----

From: Scudder, Michael (ODAG)
Sent: Thursday, August 31, 2006 6:08 PM
To: Elston, Michael (ODAG)
Cc: Connor, Mark
Subject: FW: AGAC/RIS Working Group - McNulty Letter

-----Original Message-----

From: Bernier, Colleen (USAWAW)
Sent: Thursday, August 31, 2006 5:48 PM
To: Anderson, Thomas (USAVT); DeGabrielle, Don (USATXS); Hanaway, Catherine (USAMOE); Heavican, Michael (USANE); Iglesias, David C. (USANM); Immergut, Karin (USAOR); Kubo, Ed (USAHI); Lam, Carol (USACAS); Larson, Charles (USAIAN); McDevitt, Jim A. (USAWAE); Moody, Jamison (USAEO); Perez, Paul (USAFILM); Rosenberg, Chuck (USAVAE); Suddaby, Glenn T. (USANYN); VanBokkelen, Joseph (USAINN); Whitaker, Matt (USAIAS); Wood, Lisa (USAGAS); Yang, Debra Wong (USACAC)
Cc: Scudder, Michael (ODAG); Duffy, Michael (OCIO); Connor, Mark; TBetro@ncis.navy.mil; Bogden, Daniel (USANV); Brown, Lawrence (USACAE); mdorsey@ncis.navy.mil; LFritchm@NCIS.NAVY.MIL; kehaines@NCIS.NAVY.MIL; kimsey.t@portseattle.org; Letten, James (USALAE); TGM@csweb.com; Melson, Ken (USAVAE); O'Connor, Kevin (USACT); Scott, McGregor (USACAE); Blais, Jeanine M. (USAVT); Dibbley, Sam (USAVAE); Dougherty, Terri (USAMOE); Filosi, Deborah M. (USANYN); Glut, Martha (USANE); Golden, Lois (USANM); Holt, Gail (USAGAS); Landrum, Dolores (USAFILM); Lathers, Joann (USAFILM); Mersch, Linda (USAIAN); Pass, Penny L. (USAWAE); Porter, Brenda (USACAS); Quast, Val (USAIAS); Reyes, Carmen (USATXS); Rutledge, Sue (USAOR); vanderVoort, Joy (USAHI); Vuong, Bonnie (USACAC)
Subject: AGAC/RIS Working Group - McNulty Letter

Greetings: attached please find the final letter forwarded to Deputy Attorney General McNulty. Thank you for all your help in getting this accomplished. Please let me know if you need further assistance.

Colleen O'Reilly Bernier
Assistant to U. S. Attorney John McKay
Western District of Washington
700 Stewart Street, Suite 5220
Seattle, WA 98101-1271
Phone (206) 553-4620
Fax: (206) 553-2054
e-mail: Colleen.Bernier@usdoj.gov

<<McNulty Ltr.pdf>>



U.S. Department of Justice

*United States Attorney
Western District of Washington*

700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271

Tel: (206) 553-7970
Fax: (206) 553-2054

August 30, 2006

Honorable Paul J. McNulty
Deputy Attorney General
Main Justice Bldg.
950 Pennsylvania Ave., Room 4111
Washington, D.C. 20530

Re: AGAC/RIS Working Group Request for Meeting

Dear Mr. McNulty:

Thank you for your continuing personal leadership in the work of the AGAC Regional Law Enforcement Information Sharing Working Group. We are grateful for your recent offer to meet with us. Our purpose in writing is two-fold: first, to schedule the AGAC/RIS Working Group meeting with you; and second, to outline in advance our major concerns.

We understand you fully appreciate how critical information sharing is to the war on terror. As United States Attorney, you were the driving force behind the Norfolk-Hampton Roads LInX program. During your tenure as Chair of the Attorney General's Advisory Committee, you created the RIS Working Group. Following your example, we have continued to build information sharing among federal, state and local partners in six additional LInX sites. All of us deeply appreciate your continued support as the Department of Justice led LInX projects have been launched or expanded in Washington State, Hawaii, Corpus Christi, Jacksonville-Kings Bay, New Mexico and the National Capital Region.

We look forward to briefing you on the recent, stunning operational successes being achieved in LInX sites around the country. For example, in Norfolk-Hampton Roads, LInX was instrumental in solving the case of a Norfolk police officer who was shot and killed while on duty. In LInX Northwest, which now includes approximately 100 law enforcement partners, LInX provided critical leads in numerous cases, leading to the arrests of various murderers, rapists and thieves. LInX Northwest was critical in developing several leads that helped Seattle Police resolve a recent homicide, and was

DAG000000517

Honorable Paul J. McNulty

August 30, 2006

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used by Seattle Police in establishing the identity of Naveed Haq, the suspect in the recent tragic Jewish Federation of Seattle shootings.

In recent months, as the system has matured and more local jurisdictions contribute full text records, LInX Northwest has been heavily used by federal agents, particularly FBI, DEA and the U.S. Marshal's Service. We were recently advised that, consistent with the discussions at the Pentagon meeting, DHS will begin contributing regional and national ICE records directly to LInX Northwest under the leadership of Assistant Secretary Julie Myers. Participation by United States Attorneys in LInX and other information sharing efforts continues to grow, with the RIS Working Group now at 18 members, and additional LInX sites under serious consideration. Chief among potential expansion sites is the Los Angeles project under the leadership of United States Attorney Debra Wong Yang. Preliminary plans for this project include partnerships with Sacramento area law enforcement and California state agencies in a LInX project led by United States Attorney McGregor Scott.

Additionally, United States Attorneys in Nebraska & Iowa, St. Louis, upstate New York, Connecticut, Sacramento, Portland, Anchorage and Indiana have hosted LInX briefings. Several of these locations are in various stages of organizing regional law enforcement leadership as a prelude to LInX implementation. Serious inquiries concerning the LInX process have been made by many other U.S. Attorneys and regional law enforcement leaders in several states, including Kentucky, Oklahoma, Massachusetts, North Carolina, and South Carolina. RCMP and NCIS officials have met regularly with the Working Group Chair to explore the legal, technical and policy opportunities of sharing records through LInX with our Canadian law enforcement partners.

In short, interest in the LInX approach remains exceedingly strong, and the need for a leadership role by DOJ in building regional systems is becoming increasingly clear. The Department, under your direction and leadership is well-placed to leverage the success of LInX into an expanded, national law enforcement information sharing system. These efforts are consistent with the President's call to establish the Information Sharing Environment, the will of the Congress, and our needs in combating terror, violent crime and drugs. As the Department's "Field Commanders," we United States Attorneys believe that the LInX approach offers the best, most complete and proven path to real and effective law enforcement information sharing among federal, state and local partners.

During our upcoming meeting, we hope to ask you to do the following:

- (1) Endorse Los Angeles LInX and the \$5m offered by Deputy Secretary Of Defense Gordon England to cover first year costs of the project;

DAG000000518

Honorable Paul J. McNulty
August 30, 2006
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- (2) Endorse the LInX approach to regional information sharing including full text record integration and support the expansion of LInX under United States Attorney leadership;
- (3) Mandate that DOJ law enforcement components share all legally shareable and unclassified law enforcement records with the LInX projects, including access controls be instituted to provide a greater level of protection for sensitive information in the shared data bases;
- (4) Direct DOJ policy and resources to support the building, funding and management of LInX projects in partnership with DOD and DHS.

We understand that you intend to share policy memoranda with our committee. We want to assure you of our interest in actively participating in this process on behalf of the AGAC. We are puzzled by the delays we are experiencing in the face of our written requests and briefings and trust you understand how urgently we seek your input and assistance. Our funding and program support through NCIS is on hold pending commitments from your office.

In many of our jurisdictions, local law enforcement leaders have delayed other projects due to their commitment to and firm belief the LInX approach offers the best way to share and obtain critical records in their own efforts to combat terrorism, gangs, violent crime and drugs. There is growing skepticism among those leaders because they see little progress on an issue all consider to be of the highest priority. DOJ policy on regional law enforcement information sharing remains unclear to our state and local partners, as well as to federal law enforcement agencies whose data we require in order to assure regional terrorism and law enforcement objectives are met. Some inside the department believe that DOJ's role is limited to providing interconnectivity among systems, and that developing regional systems that collect and integrate investigative records is not a federal responsibility. *We disagree.* Information sharing is not about technology – it is about providing the leadership commitment to insure full participation, complete data, and community-wide access to all relevant information. DOJ is uniquely positioned to take the lead in this effort.

Honorable Paul J. McNulty
August 30, 2006
Page - 4

Paul, our confidence in you and your leadership of law enforcement information sharing remains firm and enthusiastic. We look forward to meeting with you at your earliest convenience. As always, we are cognizant of the tremendous demands on your time.

Sincerely,

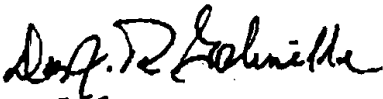
REGIONAL LAW ENFORCEMENT INFORMATION SHARING WORKING GROUP
of the Attorney General's Advisory Committee



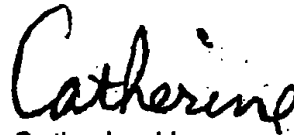
John McKay, Chair
United States Attorney
Western District of Washington



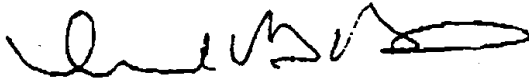
Thomas Anderson
United States Attorney
District of Vermont



Don DeGabrielle
United States Attorney
Southern District of Texas



Catherine Hanaway
United States Attorney
Eastern District of Missouri



Michael Heavican
United States Attorney
District of Nebraska



David Iglesias
United States Attorney
District of New Mexico



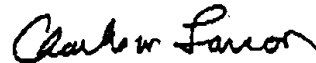
Karin Immergut
United States Attorney
District of Oregon



Ed Kubo
United States Attorney
District of Hawaii

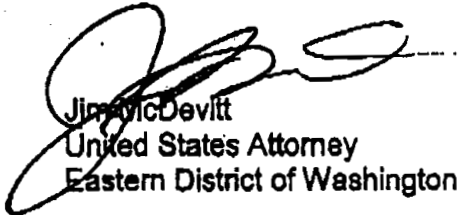


Carol Lam
United States Attorney
Southern District of California



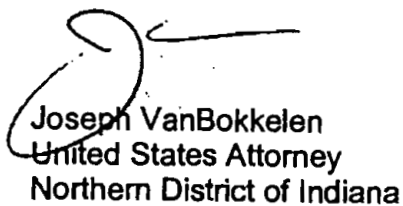
Charles Larson
United States Attorney
Northern District of Iowa

Honorable Paul J. McNulty
August 30, 2006
Page - 5

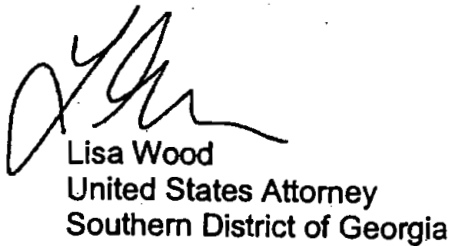


Jimmy McDevitt
United States Attorney
Eastern District of Washington

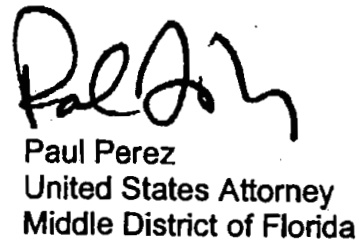
Unavailable for
Signature
Chuck Rosenberg
United States Attorney
Eastern District of Virginia



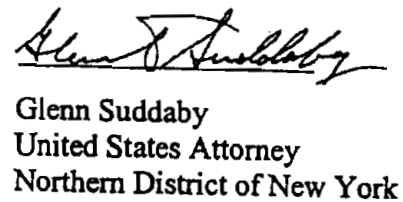
Joseph VanBokkelen
United States Attorney
Northern District of Indiana



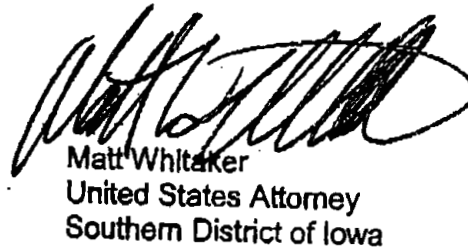
Lisa Wood
United States Attorney
Southern District of Georgia



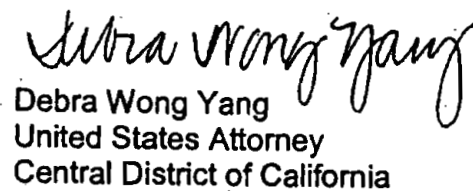
Paul Perez
United States Attorney
Middle District of Florida



Glenn Suddaby
United States Attorney
Northern District of New York



Matt Whitaker
United States Attorney
Southern District of Iowa



Debra Wong Yang
United States Attorney
Central District of California

Elston, Michael (ODAG)

From: Elston, Michael (ODAG)
Sent: Wednesday, September 06, 2006 11:25 AM
To: Sutton, Johnny K. (USATXW)
Subject: FW: August 30 LInX Letter

Attachments: tmp.htm



tmp.htm (4 KB)

-----Original Message-----

From: Elston, Michael (ODAG)
Sent: Wednesday, September 06, 2006 9:53 AM
To: Battle, Michael (USAEO)
Subject: FW: August 30 LInX Letter

-----Original Message-----

From: McNulty, Paul J
Sent: Wednesday, September 06, 2006 9:22 AM
To: Elston, Michael (ODAG)
Subject: FW: August 30 LInX Letter

-----Original Message-----

From: Immergut, Karin (USAOR)
Sent: Tuesday, September 05, 2006 4:54 PM
To: McNulty, Paul J
Subject: RE: August 30 LInX Letter

Paul: I am very sorry that we put you in a difficult position. In short, that was never my intent nor do I think that was intent of others on the subcommittee. I blame no one but myself for allowing my signature to appear on this letter. I had understood that the contents of the letter would fully discussed with you in advance and that the letter would only be sent if welcomed by you to help you in your efforts to improve information-sharing. That very issue was discussed at a conference call about sending you any such letter. I frankly did not focus much on the tone of the letter because I understood that no letter would be sent if you did not welcome a letter. We would have just talked to you in person. I completely understand your reaction and I apologize for any difficulty that this may have caused you. Karin

From: McNulty, Paul J
Sent: Tuesday, September 05, 2006 11:40 AM
To: McKay, John (USAWAW); DeGabrielle, Don (USATXS); Heavican, Michael (USANE); Immergut, Karin (USAOR); Lam, Carol (USACAS); Anderson, Thomas (USAVT); Hanaway, Catherine (USAMOE); Iglesias, David C. (USANM); Kubo, Ed (USAHI); Larson, Charles (USAIAN); Rosenberg, Chuck (USAVAE); VanBokkelen, Joseph (USAINN); Wood, Lisa (USAGAS); Perez, Paul (USAFILM); Suddaby, Glenn T. (USANYN); Whitaker, Matt (USAIAS); Yang, Debra Wong (USACAC); McDevitt, Jim A. (USAWAE)
Subject: August 30 LInX Letter

Dear Colleagues:

I've just finished reading your letter on the law enforcement information sharing issue, and I must say I am quite disappointed that you have chosen to communicate with me in this way. It appears that you are trying to force me to take some specific actions. It reads like a letter from Capitol Hill, not one from friends on the same team. This is particularly distressing because it is shared with folks outside of the Department. This is not the way we should be working through difficult issues.

I have worked hard to maintain an open line of regular communication with all U.S. Attorneys. I know as well as anyone how important it is to include the USA community in the DOJ policy-making process. I've spent 51/2 years working to strengthen that relationship.

I hope you realize that the Department may not be able to deliver on all that you seek. There are other important considerations involved in this matter. Does anyone see the problem with the Department "endorsing" a specific brand of info sharing when there are other types being used with success in various regions? That is why it is best to talk these things through a bit before laying down a challenge in writing which will set the Department up for failure.

I look forward to meeting with the working group, although now it will be a more challenging conversation.

Elston, Michael (ODAG)

From: Elston, Michael (ODAG)
Sent: Friday, September 22, 2006 7:40 PM
To: Goodling, Monica; McNulty, Paul J
Subject: RE: FYI

Even when he is in Ireland he causes problems! He needs to stop writing letters.

From: Goodling, Monica
Sent: Friday, September 22, 2006 7:38 PM
To: Elston, Michael (ODAG); McNulty, Paul J
Subject: FYI

Office Of U.S. Attorney 'stressed'
By Paul Shukovsky, P-I REPORTER
Seattle Post-Intelligencer, September 22, 2006

Federal prosecutor has seen budget steadily shrink

The federal prosecutor for Western Washington says his office is "stressed to the limit" because of years of budget cuts that threaten to slow the pace of criminal prosecutions. U.S. Attorney John McKay has issued this warning to county prosecutors and special agents in charge of federal agencies, including the FBI, the Drug Enforcement Administration and Immigration and Customs Enforcement: "We may not be as responsive as you want us to be on the cases you refer to us."

The office has been hemorrhaging prosecutors and support staff members even as the other Washington is poised to impose another budget cut for the 2006-07 fiscal year. The office, which handles federal criminal prosecutions and civil cases involving the U.S. government, is down six criminal prosecutors and one civil attorney, leaving 58 assistant U.S. attorneys, McKay said.

Fourteen positions in the office are unfilled, and McKay still must pay his 118 employees a mandatory 3 percent cost-of-living raise. McKay said he is proud that the office has been able to maintain its productivity -- prosecuting more than 800 defendants last year. "We are on track to do slightly more than that" this year, he said.

But cases that might have been prosecuted under tougher federal laws are increasingly being sent to local prosecutors. "We're not taking as many of these cases as we'd like to take," McKay said. "We're working hard to take up the slack, but we're not always successful in taking the cases we should." A bigger budget would mean more prosecutions in burgeoning problem areas, such as cybercrime, according to McKay's top assistant, Mark Bartlett.

"You'd see more cases like 'botnet,' " he said, referring to the recent prosecution of a young man from California who infected thousands of computers around the world for personal profit. "You'd see more collaboration with Microsoft and other intellectual-property firms where piracy is a huge concern."

The office's cybercrime unit has two vacancies that "prevent us from being as proactive as we'd like to be," Bartlett said.

In fiscal 2003-04, the office's budget was \$12.1 million. In fiscal 2004-05, it slid to \$11.4 million. In the current fiscal year ending next week, the budget will have shrunk further, to \$11 million.

It's not clear what the next budget will bring, but McKay has been told that the best case is a flat budget and that more cuts are possible. The strain on the U.S. Attorney's Office is being felt in Whatcom County, where criminals who move contraband such as drugs, undeclared cash and illegal immigrants across the U.S.-Canadian border are arrested by the federal agents, but frequently prosecuted by locals.

McKay said his office is declining about 80 percent of the cases at the border that could be prosecuted in federal court. It's a lost opportunity, he said.

"We try to flip people by putting them through federal prosecution," said McKay, using a slang term for persuading criminals to cooperate with law enforcement in return for a lighter sentence. "We don't have that flexibility right now."

Whatcom County Prosecutor Dave McEachran said he's "amazed" that McKay is facing the possibility of more budget cuts. McEachran needs federal prosecutors to take some of the load off his attorneys, who are handling an average of 200 felony cases apiece.

"We have a huge caseload here," he said. McEachran said local prosecutors on the U.S. side of the Mexican border had to threaten to stop prosecuting arrests made by federal agents to get federal dollars to help them with the crush of border-related crime.

There have been attempts by northern border prosecutors to get similar federal assistance. But they have never received congressional approval, McEachran said. Cuts in the U.S. attorney's budget also affect violent crimes such as bank robberies, which occur at a high rate in Western Washington.

Bank robberies can be prosecuted federally, and those convicted given harsher sentences. But "most of them are shifting over to the locals," McKay said. Only the most violent cases or serial bank robberies are seeing the inside of a federal courtroom.

As for "note jobs," in which an unarmed robber slides a demand note to a teller -- "we're not seeing those," McKay said. "This is going into our third year of really tough budgets," he said. "We keep expecting it to get fixed, but that's dependent on Congress."

Elston, Michael (ODAG)

From: Roehrkasse, Brian
Sent: Tuesday, September 26, 2006 3:51 PM
To: Elston, Michael (ODAG); Smith, Kimberly A; Nowacki, John (USAEO)
Cc: McNulty, Paul J; Scolinos, Tasia
Subject: SEATTLE POST-INTELLIGENCER - Office of U.S. attorney 'stressed'

I happened to see this article when I was traveling last week in the Northwest. These comments are not exactly helpful. John, anything we can do?

SEATTLE POST-INTELLIGENCER

http://seattlepi.nwsourc.com/local/286099_prosecutors22.html

Office of U.S. attorney 'stressed'

Federal prosecutor has seen budget steadily shrink

Friday, September 22, 2006

By PAUL SHUKOVSKY
P-I REPORTER

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P-I reporter Paul Shukovsky can be reached at 206-448-8072 or paulshukovsky@seattlepi.com.

Brian Roehrkas
Deputy Director of Public Affairs
U.S. Department of Justice
(202) 514-2007

Elston, Michael (ODAG)

From: Margolis, David
Sent: Thursday, October 05, 2006 12:16 PM
To: Battle, Michael (USAEO); Kelly, John (USAEO); Parent, Steve (USAEO); Nowacki, John (USAEO); Elston, Michael (ODAG); Moschella, William; Mercer, William W; Shults, Frank (ODAG); Barnes, Christopher (USAOHS) EARS
Subject: FW: Thought you might be interested in this; it's from a local weekly
Attachments: tmp.htm; ole0.bmp; ole1.bmp; ole2.bmp; ole3.bmp; ole4.bmp



tmp.htm (34 KB) ole0.bmp (528 B) ole1.bmp (528 B) ole2.bmp (528 B) ole3.bmp (528 B) ole4.bmp (528 B)

fyi

Kevin Ryan must have felt like a man invited to his own stoning. A hive of Department of Justice auditors had spent a week interviewing the U.S. Attorney's staff about his command of the office. Such on-site appraisals, performed every three years by review teams dispatched from Washington, D.C., climax with evaluators airing employee criticisms of the boss.

Ryan and his division supervisors joined the D.C. crew in a large conference room in the U.S. Attorney's Office, nestled on the 11th floor of the Federal Building at 450 Golden Gate Ave. A video feed transmitted the meeting to the agency's branch offices in Oakland and San Jose. Sitting in silence, Ryan listened while, one by one, auditors pelted him with a litany of staff complaints.

Attorneys in the office disparaged him as isolated, inflexible, and disengaged from the agency's work. They blamed his managerial style for poisoning morale and neutering the authority of supervisors. Several accused him of granting too much control over personnel and legal decisions to his first assistant, creating an autocracy by proxy.

Those who attended the meeting or watched the simulcast suspected that, as he absorbed the harsh remarks, fury roiled beneath Ryan's rigid exterior. When the auditors finished their presentation, he said little before stalking from the room. "I'm sure it was unpleasant for him," one federal prosecutor says. "But he shouldn't have been surprised."

The review, conducted in March, proved a dramatic drop-off from Ryan's first evaluation in 2003, a year after President Bush appointed him to the post. Back then, he enjoyed robust staff support, and the Justice Department rated the Northern District of California as arguably the strongest of its U.S. Attorney offices. Over the next three years, owing to a mass emigration of veteran prosecutors who chafed under Ryan's rule, the goodwill waned, along with the office's status. Seven months past the latest audit, the staff's mood remains as dour as its opinions of the man in charge.

"There's still a sense of malaise," another attorney in the office says, "and he's still bunkered."

Indeed, in interviews with two dozen current and former prosecutors, defense lawyers, and federal judges, an image emerges of Ryan as either oblivious to or dismissive of the unrest around him. More than 50 attorneys have quit on his watch, depriving the office of some of its longest-serving criminal and civil litigators. Legal observers regard the turnover as the primary reason for the office's caseload falling during the Ryan era, a trend evinced by a steep decline in white-collar prosecutions.

By contrast, the number of tactical blunders committed by prosecutors appears on the rise. A recent spate of gaffes, including one that ignited an ongoing federal probe, has magnified a perception of Ryan as out of touch. Beyond the interest he shows in BALCO and a handful of other marquee cases, his critics contend, the post of U.S. Attorney stands vacant.

"I'm smart enough to know what I don't know," Ryan told the San Jose Mercury News a month before he assumed office. With his reappointment looming, some wonder if he knows why the almost universal praise he enjoyed four years ago has curdled. <<Picture (Metafile)>> The audit marked only the latest and loudest geyser of vitriol to spew within Ryan's office. Before leaving for private practice last year, Prosecutor John Hemann e-mailed his colleagues a copy of an open letter addressed to Ryan. He described a staff beset by low spirits and high attrition, and a U.S. Attorney inclined to ignore their concerns.

"There are problems in the office now that have not existed in kind or magnitude since I

got here in 1995 ...," wrote Hemann, who served on the federal Enron task force that prosecuted the company's executives. "It is no solution to deny these problems exist. ... People in the office - lawyers and staff - are unhappy and frustrated. People outside the office are critical and, increasingly, derisive."

In January, two months before the on-site appraisal, another longtime prosecutor, George Bevan, broached similar themes in a letter he sent to Justice Department officials handling the audit. According to excerpts published in The Recorder, a Bay Area legal journal, Bevan wrote of an office "in crisis" and faulted "gross mismanagement" for the attorney exodus.

Bevan, a criminal prosecutor in the agency's Oakland branch, declined to comment to SF Weekly. Hemann, a partner at the San Francisco office of Morgan Lewis, did not respond to interview requests.

But their claims jibe with those offered by other attorneys in the office and ex-prosecutors who worked under Ryan. They depict him as aloof, quick to anger, and intolerant of debate, a manager who considers it a breach of fidelity to question his decisions. "It doesn't matter how much you know about the law or how much experience you have," a prosecutor says. "To him, what matters is loyalty; asking questions is disloyal."

Alluding to that "climate of suspicion," as one attorney called it, prosecutors who spoke to SF Weekly requested anonymity, fearing reprisals; former prosecutors also were loath to talk for attribution, citing professional and personal ties to the office. Yet the sheer number of lawyers voicing discontent suggests an agency in upheaval.

The friction began intensifying in fall 2003, burning through the good cheer that insulated Ryan during his first year. In July 2002, he inherited the office from interim U.S. Attorney David Shapiro, who filled in for a year after Robert Mueller departed to head the FBI.

Mueller bequeathed a U.S. Attorney's Office whose reputation he dusted off and buffed to a high sheen. His predecessor, Michael Yamaguchi, resigned in 1998, forced out by Justice Department officials amid the office's sinking caseload and fractured morale. Armed with a reformer's mandate, Mueller jettisoned a dozen supervisors in his first six months and ordered his attorneys to start filing more cases.

The ex-Marine's blunt manner earned him the label of dictator. Yet during his three-year tenure, Mueller also nurtured a collective pride among his attorneys, gaining respect for his work ethic and legal acumen. He visited courtrooms to observe them in action, and whether they won or lost a verdict, he seldom forgot to praise their effort. He played the role of staff advocate in court, appearing with his lawyers on occasion to press the prosecution's argument if a judge doubted its merit.

Revitalized by Mueller, the office filed 1,512 cases in 2000, almost double its total two years earlier, when Yamaguchi stepped down. Prosecutors hunted big game, indicting members of the Nuestra Familia gang by exploiting racketeering laws; pursuing a massive corporate-fraud case against drug giant McKesson HBOC; and charging former Ukrainian Prime Minister Pavlo Lazarenko in a money-laundering scam.

The Northern District office prosecutes criminal and civil offenses across a region stretching from Monterey to the California-Oregon border, and the U.S. Attorney ranks as the area's top law enforcement official. As the office flourished under Mueller, the FBI and other federal agencies - if given a choice of court venues based on a crime's geographic range - started referring more cases to the Northern District. He rode that swell of success to his post with the FBI in 2001.

"He had the pulse of the entire office," one veteran prosecutor says. "But he trusted his division chiefs and he gave people the freedom to make decisions."

Shapiro more or less sustained the momentum between Mueller's exit and Ryan's entrance. Following a six-year stint as a Municipal and Superior Court judge in San Francisco, Ryan arrived as an esteemed trial jurist and a devoted Republican. Visitors to his court chambers at the Hall of Justice could expect to hear the radio tuned to Rush Limbaugh's show.

"He's a real Boy Scout," says former federal prosecutor Rory Little, a professor at Hastings College of the Law. "He believes in the work."

A San Francisco native and former Alameda County prosecutor, Ryan, 48, won the U.S. Attorney job despite lacking federal court experience. Most legal experts disregarded that hole in his résumé, including Joseph Russoniello, the U.S. Attorney before Yamaguchi, who surmounted the same deficiency.

Russoniello chaired the search committee that recommended Ryan to White House officials. In a 2002 newspaper interview, he downplayed the need for the incoming U.S. Attorney to possess federal bona fides. "What is important is the capacity to manage a lot of people who do have a deep understanding of the rules," Russoniello said.

On that count, Ryan's critics brand him both inept and indolent. In the words of one former prosecutor, "While he's been there, the soul of the office has left."

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(Metafile)>>

After Ryan's relatively calm first year, the honeymoon ended in October 2003. That month, Ryan named Eumi Choi as his first assistant, a position with oversight of the criminal division and the narcotics task force, as well as the Oakland and San Jose branches. A federal prosecutor for six years in Washington, D.C., before she moved to San Francisco in 2000, Choi already supervised the civil, tax, and administrative divisions as the executive assistant U.S. Attorney. The dual managerial roles and Ryan's blessing gave her, in effect, carte blanche over the office.

Current and former prosecutors assert that, from the moment of her promotion, Choi clashed with supervisors and attorneys alike. Sources allege that she usurped the authority of division chiefs, forcing them to clear charging decisions with her and dictating case strategy. Section meetings, once free-flowing affairs in which managers and prosecutors swapped ideas, turned funereal, the staff loath to contradict Choi's edicts.

"It became all about following directions," a prosecutor says.

Likewise, Choi wielded a heavy hand in personnel matters: She remains under investigation as part of a federal probe into the firing of an administrative officer last summer.

Attorneys joked that the only aspect of office life unscathed by her influence were the farewell parties held for outgoing colleagues.

Last year, over the span of four months, the staff hosted goodbye soirees for Jonathan Howden, Ross Nadel, and Ben Burch, who together boasted some 60 years of experience working in the office. At the time of their respective departures, Howden headed the narcotics task force, Nadel ran the criminal division, and Burch oversaw the Oakland branch. Howden and Nadel accepted early retirement packages to join private firms, while Burch moved to the Superior Court bench in Contra Costa County.

Yet several of their onetime co-workers insist that, to varying degrees, the three men sought a career change out of frustration with their loss of autonomy. "Those guys were the lifer type," says a former federal prosecutor about the trio, none of whom agreed to talk with SF Weekly. "They had stuck around through all these other [U.S. Attorneys]. That office was where they wanted to be."

Former colleagues characterize the loss of Burch, who preceded Nadel as criminal division chief, as the stiffest blow to the staff. Revered as a walking index of the federal code, he knew the intricacies of the law as acutely as he understood the tendencies of Northern District judges. "Ben was the guy who could help you on the little issues, the judgment calls where he could give you answers based on his own experience," an ex-prosecutor says. "There's nobody left like that."

A total of 101 prosecutors make up the Northern District's three-branch office. The exodus of more than 50 attorneys during Ryan's reign peaked last year, when 17 walked away. Ten have packed up this year, and rumors persist that two others may follow by month's end. Current prosecutors and their departed cohorts link the turnover to Choi's greater influence and Ryan's diminished visibility. In his first year, Ryan mingled with the staff, urging attorneys to stop by his office anytime and soliciting their opinions on whom to promote. But after elevating Choi to first assistant, his detractors contend, he withdrew, ceding the day-to-day grind of running the office to her. He closed his open door, requiring attorneys who wanted to see him to arrange an appointment through his secretary, and meeting only if Choi also had time to attend.

"She's the gatekeeper," another ex-prosecutor says of Choi. "People have to go through or past her to talk to him."

Ryan's time as a state judge and county prosecutor provided scant training for supervising a big office rife with the outsized egos common to prosecutors. Shy by nature, according to those who have worked with him, he appears to rely on Choi as a buffer - perhaps to his detriment. "It just makes him seem more remote," one prosecutor says. "Being U.S. Attorney is not an impossibly difficult job. Slap people on the back, thank them for their work, and then take all the credit. But just talking to people seems beyond him."

Mueller, the former U.S. Attorney, strolled the hallways around 5 p.m. each day to perform "bed checks," chatting with his lawyers about their cases. The visits, though annoying to some, served to motivate the staff to match his zeal. If Ryan made similar rounds, another prosecutor says, he would find rows of empty offices.

"People don't hang around till 8:30 at night anymore - they're out by 5. Why would you stick around? Morale sucks."

Attorneys conveyed that attitude during the Justice Department appraisal in March.

Precisely what Ryan or Choi thought of the review is harder to discern - neither agreed to an interview with SF Weekly. Discussing the office's status quo fell to spokesman Luke Macauley, who pointed out that the auditors' presentation involved preliminary findings; a final written report will detail "positive accomplishments."

An average of 11 prosecutors quit in the two years before Ryan took office, compared to 13 a year since his arrival. Macauley quotes the statistics to counter claims of a soaring attrition rate under Ryan, ascribing the departures to the office's retirement buyout.

offer and the lure of bigger salaries in private practice. He provides more numbers in disputing the perception of a staff bereft of veteran attorneys. Since 2002, the office has hired 24 prosecutors from other U.S. Attorney districts and Justice Department agencies.

In assessing the turnover at the office of his putative adversary, Barry Portman, the federal Public Defender for the Northern District of California, downplays its impact. "If you have people who are there too long, things can get stale," says Portman, who declined to talk about Ryan. "New blood can be healthy."

Likewise, says Little, the Hastings law professor, grouching about staff departures occurs under every U.S. Attorney. He recalls joining Russoniello's office in 1989 to replace a prosecutor who left after four years. Skeptics said the office would miss the man's experience - the same refrain that trailed Little out the door in 1994.

"History is remarkably short-sighted," he says. "People used to say Joe Russoniello wasn't doing a good job. Then after he was gone, they started calling those the golden days."

But the number of lawyers who have bolted from Ryan's staff may matter less than the accrued institutional knowledge they took with them. By conservative estimate, the office has lost prosecutors with a total of more than 500 years of experience in the Northern District. Aside from Burch, Nadel, and Howland, longtime prosecutors who departed include Steven Gruel, former chief of the major crimes unit, and Patrick Robbins, who ran the securities fraud section. The two logged a combined quarter-century in the office.

Both lawyers, now in private practice, declined to comment. Even so, they belong to the growing diaspora of ex-prosecutors who, while working under Robert Mueller's direction, turned the Northern District into one of the nation's most vaunted U.S. Attorney's offices. Such acclaim has fallen mute. <<Picture (Metafile)>>

In his role as federal lawman, Ryan shows a state prosecutor's relish for bagging thugs. During his 11 years with the Alameda County District Attorney's Office, he prosecuted dozens of murder and gang-related cases. Over the last year, his office, applying racketeering and trigger-lock laws, indicted two dozen members of the Down Below and Page Street gangs. The aggressive push has occurred at a time when the San Francisco District Attorney's Office has moved slowly in prosecuting gang-related homicides.

Between 2004 and last year, Ryan's gang crackdown boosted the number of organized-crime cases from eight to 61; weapons-related prosecutions jumped from 89 to 110. The rising figures elicit hosannas from San Francisco police. "Kevin Ryan has given us great support," says Capt. Kevin Cashman, head of the SFPD's investigations bureau. "He understands what we're up against."

Ryan has tagged along with DEA agents on a pair of drug stings the last two years. Javier Pena, special agent in charge of the DEA's San Francisco office, describes him "as a man who wants to be involved, someone who's always open to ideas."

The gang and drug busts, though lesser known than BALCO, land on the list of high-profile cases handled by Ryan's office. Macauley, his spokesman, ticks off others: convictions of 10 people on charges related to trafficking of prostitutes from South Korea to San Francisco brothels; Operation Copycat, a nationwide music, movie, and software piracy case that so far has seen 32 defendants convicted; and the ongoing prosecution of Reliant Energy executives accused of price-fixing during the state energy crisis in 2000.

But beneath the headlines lies the small print that reveals a plunge in the office's overall caseload. In 2001, with Mueller and then Shapiro in charge, prosecutors filed 1,291 cases, according to a Syracuse University database that tracks Justice Department statistics. The next year, Ryan's first, the number tumbled to 1,013, and from 2003 to 2005, the office averaged 947 prosecutions a year, a drop of nearly 27 percent in four years.

Ryan's critics rap him hardest for the drop in white-collar cases. Prosecutors filed 93 last year, down from 214 in 2000, the same year Mueller formed the office's high-tech crimes unit, the first of its kind in the country. The decrease in cases, while mirroring a national trend that bespeaks the feds' greater emphasis on antiterrorism efforts, troubles legal experts, given that Ryan's office patrols Silicon Valley.

"Just because the number of cases has gone down doesn't mean human venality has changed," says Peter Keane, dean emeritus of the Golden Gate University School of Law. "You would think there would be a steady stream of dot-com fat cats heading into court."

The ongoing stock options back-dating probe may portend at least a trickle, with executives of Brocade indicted in August and other companies under federal scrutiny. Yet Keane, a former San Francisco public defender, argues that Ryan has abdicated the U.S. Attorney's traditional role of prosecuting large-scale tax, fraud, and political corruption cases. "A district attorney will go after gang cases and gun cases," he says. "But it's really only the federal prosecutor who can do the big white-collar cases."

Prosecutors in Ryan's office contend that the constant staff churn slows pursuit of complex white-collar crimes, as new attorneys must spend weeks, sometimes months, bushwhacking through documents to learn a case. The ongoing federal probe of state Senator

Don Perata's business dealings has lagged since last year, when Burch, the Oakland branch chief handling the case, quit the office. Last week's departure of Haywood Gilliam, the lead attorney on the Reliant Energy case, could further bog down that long-running prosecution.

Budget cuts have trimmed Ryan's staff by a dozen prosecutors since 2004. The shortage of bodies, coupled with veteran attorneys burning time to break in recent arrivals, hampers the office's ability to cultivate fresh cases, an ex-prosecutor says. "You should be able to do both - violent crimes and white-collar. But there's a lot of new people playing catch-up, so you don't see as many [white-collar] cases being brought."

Or as much rapport between the U.S. Attorney's Office and law enforcement agencies seeking to refer cases to it. A prosecutor recounts that, in the Mueller era, federal agents would hang out in the hallways, pestering attorneys for a 10-minute meeting to sell a case.

"It's a lot quieter these days," the lawyer says.

Similarly, Kathleen Bisaccia, former head of the SEC's San Francisco branch, noticed that as longtime attorneys left the Northern District, their replacements returned fewer calls on potential cases. "When you lose that relationship with someone who's been there for years, it's going to slow things down."

Yet the number of cases filed barely scrapes at the top soil of the office's deeper work, argues Mark Krotoski, the acting criminal division chief. He offers the example of BALCO. The probe, while counting as only two indictments, prodded Congress to strengthen steroids laws and Major League Baseball to conduct its own investigation.

"Numbers just tell part of the story," Krotoski says. "You have to look at the complexity of the case."

Portman, the Federal Public Defender, credits that measured approach to Ryan. "The office under him seems more concerned with large cases, as opposed to rounding up a bunch of illegal immigrants."

At the same time, considering the thousands of hours Ryan's office has pumped into BALCO, the small courtroom returns - five convictions - raise questions about its worth. Judge Susan Illston grazed that topic last October during the sentencing of BALCO founder Victor Conte Jr., who received a term of four months after the U.S. Attorney's Office nixed 40 of 42 charges against him and two co-defendants. In the future, Illston said, prosecutors ought to weigh potential charges "at the beginning and not the end of the case."

Attorneys who have worked with Ryan believe he should heed the words. More than one portrayed him as "consumed" by the BALCO-inspired media craze, holding countless meetings with his prosecutors on the case. As the scandal lurches into its fourth year, one lawyer in his office asks, "Shouldn't he pay that much attention to every case?" <<Picture (Metafile)>>

Illston's tut-tutting marked yet another small disgrace for Ryan's prosecutors in front of a federal judge. Perhaps the most embarrassing episode occurred last year before U.S. District Judge Charles Breyer during the trial of an alleged cocaine dealer.

Much of the prosecution's case relied on a one-time drug trafficker turned DEA informant, whom the FBI had fired ("Bait and Snitch," SF Weekly, Nov. 23, 2005). On cross-examination by a defense lawyer, a DEA agent first insisted he had no idea why the FBI released the snitch, then later admitted he knew.

Realizing the agent might have committed perjury, Breyer pointedly asked whether prosecutors wanted to drop the charges. He went so far as to summon Choi, Ryan's first assistant, from her office on the 11th floor of the federal building to his courtroom on the 19th. She opted to press on with the case.

It proved a ruinous choice. By leaving the agent on the stand after his apparent contradiction, prosecutors virtually forced him to invoke his rights against self-incrimination. Once he stepped down, Breyer threw out his testimony, crippling the case. After a feeble effort to continue, prosecutors finally dismissed the charges later that day.

The fiasco prompted Breyer to order a federal probe into possible misconduct by the snitch, the agent, and the DEA. He spared prosecutors, praising them for their ethics, noting that they provided key details on the informant to the defense. Yet it's fair to ask whether the two relatively inexperienced attorneys who bungled the case adequately prepped the agent for his testimony, or whether Choi should have spiked the tainted case when Breyer asked.

Current and former prosecutors assert the two prosecutors needed the kind of veteran oversight that has seeped out of the office the last three years. Meanwhile, defense lawyers portray Choi's mulish refusal to drop the case as symptomatic of Ryan's legal ethos.

"It's part of a win-at-all-costs mentality," says Ian Loveseth, the defense attorney in the case. "There's been a loss of rational perspective."

Critics fault that tunnel vision for a series of toe-stubbings by Ryan's prosecutors. In April, Breyer ordered a retrial in a death threat case after prosecutors neglected to

disclose details to the defense about an expert's potential testimony. During a theft trial last year, Judge Jeffrey White excoriated prosecutors for failing to cough up information on the defendant to his lawyer; they soon dropped the case. But those flare-ups were cool breezes compared to Judge William Alsup's eruption this summer over the steady refusal of prosecutors to release to defense lawyers the names of witnesses and informants in an ongoing murder case. Prosecutors maintain that divulging the identities invites retaliation on the sources from allies of the gang members facing homicide charges; defense attorneys argue they need the names to investigate the case. During a pretrial hearing, Alsup, after months of futile prodding of prosecutors, blew up at them. He swatted away the retaliation rationale as "bogus" and charged that prosecutors sought only a "tactical advantage." They have appealed a sanction imposed by him that could exclude the unnamed sources from testifying.

"Prosecutors are going to fight tooth and nail to give as little as they can and not turn over anything until the very last minute," says Richard Mazer, who represents a defendant in the case. "They're going to stonewall as much as they can."

If that tactic represents a change in the Northern District, Macauley, Ryan's spokesman, counters that federal prosecutors across the country employ the strategy. Without concealing their identities, he adds, the sources could end up dead.

Legal observers theorize that the tensions between Ryan's office and the federal bench would abate if he forged stronger ties with the judges. Instead, attorneys in the office claim, he eschews reaching out to judges, and his absence at an annual judicial conference last year caused a stir. "That's like saying 'fuck you' to the judges," one prosecutor says.

Former federal prosecutor Little, who talks to Ryan on occasion, doubts the U.S. Attorney will change his approach. Still, despite the heavy criticism lobbed at Ryan, Little places him on par with former U.S. Attorney Joseph Russoniello, and well ahead of Michael Yamaguchi. As for comparisons to another U.S. Attorney, Little says, "Bob Mueller was an exceptional federal prosecutor. To say Kevin Ryan is not Bob Mueller is not a bad thing." <<Picture (Metafile)>>

In 2002, Ryan applied for a vacancy on the Northern District bench. As the story goes, White House officials urged him to instead take the job of U.S. Attorney, assuring him that after gaining a bit of federal seasoning, he would don a judge's robe. Whether Ryan still carries that career ambition is unknown. Yet considering his cold relationship with the region's federal judges and the speculation in legal circles that Justice Department officials would prefer that he step down, the optimism of four years ago seems a distant glimmer.

A month before he took office, Ryan told the Mercury News, " ... I think I have an advantage because I'm not coming from within the system. To use an overused phrase, I'll be able to think outside the box."

He's had a more difficult time stepping out of his bunker.

Elston, Michael (ODAG)

From: USAEO-OTD
Sent: Thursday, October 05, 2006 3:54 PM
To: USAEO-USAttorneys@usa.doj.gov; USAEO-FirstUSAs@usa.doj.gov; USAEO-AdminOfficers@usa.doj.gov
Cc: USAEO-USASecretaries@usa.doj.gov; USAEO-CrimChiefs@usa.doj.gov; USAEO-CivChiefs@usa.doj.gov
Subject: Resignation Guidance for United States Attorneys
Attachments: tmp.htm; Resignation Guidance.pdf; Resignation Guidance Attach.pdf



tmp.htm (3 KB)



Resignation

Guidance.pdf (22 KB)



Resignation

Guidance Attach.pdf

reply to this
address.

This is an unattended E-Mail account. Please do not

TO: ALL UNITED STATES ATTORNEYS
ALL FIRST ASSISTANT UNITED STATES ATTORNEYS
ALL ADMINISTRATIVE OFFICERS

FROM: Michael A. Battle
Director

SUBJECT: Resignation Guidance for United States Attorneys

ACTION REQUIRED: Information Only.

CONTACT PERSON: John A. Nowacki
Principal Deputy Director
Telephone: (202) 514-2121
E-mail: John.Nowacki@usdoj.gov

Please see the attached memorandum regarding Resignation
Guidance for United States Attorneys.

To open attachment right click, select "open" select "open it",
and select "ok".

Attachment

<<Resignation Guidance.pdf>> <<Resignation Guidance Attach.pdf>>

cc: All United States Attorneys' Secretaries



U.S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

Room 2261, RFK Main Justice Building
950 Pennsylvania Avenue, NW
Washington, DC 20530

(202) 514-2121

MEMORANDUM - Sent via Electronic Mail

DATE: OCT 05 2006

TO: ALL UNITED STATES ATTORNEYS
ALL FIRST ASSISTANT UNITED STATES ATTORNEYS
ALL ADMINISTRATIVE OFFICERS

FROM: Michael A. Battle
Director

SUBJECT: Resignation Guidance for United States Attorneys

ACTION REQUIRED: Information Only.

CONTACT PERSON: John A. Nowacki
Principal Deputy Director
Telephone: (202) 514-2121
E-mail: John.Nowacki@usdoj.gov

Recently, a few United States Attorneys have contacted me regarding the procedures for submitting their resignations. To assist you, I have attached answers to some of the most frequently asked questions regarding the resignation process including guidance for a resigning interim United States Attorney who is returning to a position as an Assistant United States Attorney. If you intend to resign, please advise me at your earliest opportunity either by electronic mail or by phone (202) 514-2121. It is very important for us to provide the President and the Attorney General with as much advance notice as possible.

Letters of resignation addressed to the President and to the Attorney General should be sent by express mail to the U.S. Attorney Nominations and Appointments Unit, EOUSA. Once a United States Attorney announces their intention to resign, please be aware that discretionary staff personnel changes (e.g., appointments, promotions, and reassignments), at all grade levels, from all sources, will be restricted. This affects actions which increase employment by adding a new employee to a district's rolls and internal actions which involve a change in position, such as a promotion or reassignment.

Any offer of employment extended verbally or in writing before the United States Attorney announces their resignation, including offers that were contingent on clearances such as drug testing or background investigation, will be honored.

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No new offer of employment in the district may be made after the United States Attorney announces their resignation. If the office is in the final interview stage with any candidate, the selecting official must inform the applicant that no offer can be extended until the new United States Attorney is appointed.

If you have any questions, please contact John Nowacki at (202) 514-2121.

Attachments

cc: All United States Attorneys' Secretaries

RESIGNATION OF A UNITED STATES ATTORNEY

FREQUENTLY ASKED QUESTIONS

- **The district's United States Attorney has decided to resign from their position. Who needs to be notified?**

The United States Attorney should prepare letters of resignation to the President and the Attorney General stating the date and time of the proposed resignation. Generally, the letter to the President is brief, while the letter to the Attorney General is usually longer and more personal (see examples attached). These letters should be sent by express mail to the U.S. Attorney Nominations and Appointments Unit, Executive Office for United States Attorneys (EOUSA), to handle delivery.

The United States Attorney should personally notify the Attorney General of their resignation. The United States Attorney should also contact their United States Senators or other individuals involved with recommending a replacement, so that the process of selecting a successor can begin.

The United States Attorney should call the Director, EOUSA, (202) 514-2121, at their earliest opportunity to notify them of their plans to resign.

The United States Attorney should announce their resignation to their district. They may send a memorandum announcing their departure to government agency heads and other interested parties.

- **Does a press release need to be prepared? And if so, what should it say?**

The United States Attorney's Office may send a news release announcing the United States Attorney's resignation. The press release should include in general terms the United States Attorney's future plans and any specific accomplishments (see example attached). The press release should not be used as an announcement of a political campaign or a new business. Courtesy copies of the press release should be forwarded to EOUSA and the Department of Justice, Office of Public Affairs.

- **Who handles paperwork for a United States Attorney's resignation, and what documents need to be prepared?**

The EOUSA's Personnel Staff handles separation actions for all United States Attorneys, both Servicing Personnel Office districts (SPO) and non-SPO districts. EOUSA also processes all insurance forms and associated benefits for departing United States Attorneys.

The district's Administrative Officer should complete an SF-52, Request for Personnel Action, for the United States Attorney's resignation. This document, along with a copy

of the United States Attorney's resignation letter, is sent to EOUSA's Personnel Staff.

- **What happens to the United States Attorney's annual leave upon his/her resignation?**

A Presidentially-appointed United States Attorney does not earn leave. If a United States Attorney was a federal employee earning leave prior to the Presidential appointment, their leave was frozen upon appointment. The United States Attorney generally receives a lump sum leave payment upon resignation for any annual leave accrued prior to the Presidential appointment. The lump sum payment is calculated at the hourly rate the employee earned at the time their annual leave was frozen. If the United States Attorney accepts a position in the federal government after their resignation (e.g., appointment to a federal judgeship), annual leave may transfer to the new appointment. Lump sum leave payments are processed by EOUSA's Personnel Staff.

- **What other steps need to be taken before the United States Attorney actually separates from the office?**

The United States Attorney should ensure that the district's Administrative Officer has their correct home and work forwarding information. The United States Attorney should also work with the district's Administrative Officer to ensure that all obligations are met concerning the return of government property, the removal or preservation of federal records, and post-employment restrictions.

- **Are there any restrictions on hiring and staffing changes within the office after the United States Attorney announces their resignation?**

Yes. After a United States Attorney announces his or her resignation, all discretionary staff personnel changes (e.g., appointments, promotions, and reassignments), at all grade levels, from all sources, will be restricted. This affects actions which increase employment by adding a new employee to the district's rolls and internal actions which involve a change in position, such as a promotion or reassignment. Career ladder promotions for support employees are exempt because they do not involve filling a different position and all non-discretionary personnel actions (e.g., within-grade increases and pay adjustments) are also exempt from this prohibition.

Offers of employment extended verbally or in writing prior to the resignation announcement of a United States Attorney, including offers that were contingent on clearances such as drug testing or background investigation, will be honored.

No new offers of employment in the district may be made after the United States Attorney announces his/her resignation. If the office is in the final interview stage with any candidate, the selecting official must inform the applicant that no offer can be extended

until the new United States Attorney is appointed either by the President or as an interim.

- **What is the process for determining the new United States Attorney?**

When the vacancy of a Presidentially-appointed United States Attorney occurs, the Attorney General has the authority to appoint an interim United States Attorney whose term lasts until the confirmation of a Presidential appointment. In the absence of an interim United States Attorney appointed by the Attorney General, the Department of Justice's Office of Legal Counsel has determined that the First Assistant United States Attorney (FAUSA) may act as the United States Attorney under the Vacancies Reform Act for no more than 210 days and should be referred to as "Acting United States Attorney." No paperwork (SF-52, SF-61 Appointment Affidavit, etc.) is required for this change.

- **How long is a Presidentially-appointed United States Attorney's term?**

A Presidentially-appointed United States Attorney serves for a four-year term but may hold over after his/her term expires (and without formal reappointment), at the pleasure of the President.

- **Where should recommendations for United States Attorney appointments be sent?**

Recommendations for United States Attorneys should be forwarded to the Attorney General. Copies of recommendation letters should be sent to the Director, EOUSA.

- **Who can make recommendations for an interim United States Attorney?**

The departing United States Attorney may make a recommendation of an interim United States Attorney to the Director, EOUSA.

- **When serving as an interim United States Attorney, what title should be used?**

When serving under an Attorney General appointment or Presidential appointment, the title of "United States Attorney" should be used. "Interim United States Attorney" refers to the status not the title of the appointment. If the FAUSA is serving as the Acting United States Attorney under the Vacancies Reform Act, the title "Acting United States Attorney" should be used.



U.S. Department of Justice

*United States Attorney
Eastern District of the United States*

The President
The White House
Washington, DC 20500

Dear Mr. President:

I am hereby submitting my resignation as United States Attorney for the Eastern District of the United States, effective midnight December 31, 2006.

I deeply appreciate the opportunity to have served as United States Attorney. I wish you and your administration the best of luck and success.

Sincerely,

John A. Smith
United States Attorney

DAG000000540



U.S. Department of Justice

*United States Attorney
Eastern District of the United States*

The Attorney General
United States Department of Justice
Main Justice Building, Room 5111
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

I am hereby submitting my resignation as United States Attorney for the Eastern District of the United States, effective midnight December 31, 2006. It has been a great honor and privilege to have served these past two years as a United States Attorney, initially by your appointment and thereafter by Presidential appointment.

Serving the United States as a United States Attorney has been the highest honor and most fulfilling duty of my public career. Thank you for your support and the support of the Department of Justice during my tenure.

I deeply appreciate the opportunity to have served as the United States Attorney for the Eastern District of the United States. I wish you the best of luck and success.

Sincerely,

John A. Smith
United States Attorney

DAG000000541

**UNITED STATES ATTORNEY FOR THE EASTERN DISTRICT OF
THE UNITED STATES ANNOUNCES RESIGNATION**

Washington, DC . . . United States Attorney John A. Smith, 43, of Washington, DC, has announced his resignation effective midnight on March 30, 2000. After his resignation, he plans on joining a private law firm in the Washington, DC, area.

Smith, a graduate of American University and the University of Virginia Law School, had previously served as First Assistant United States Attorney and Chief Assistant United States Attorney for the Criminal Division. During his tenure as United States Attorney, he served on the Attorney General's Advisory Committee and was co-chair of the Civil Rights Subcommittee. Mr. Smith has also served as an Instructor at the Attorney General's Advocacy Institute and the National Institute of Trial Advocacy. He implemented the current Weed and Seed program, which helps local communities reduce crime by bringing in investment and opportunity.

As United States Attorney, Smith also successfully prosecuted many civil rights and hate crime cases. In *US v. Carter*, he sought the conviction in 1998 of Bob D. Carter for racially-biased assaults against African American citizens and police officers in the downtown Washington, DC, area. Mr. Smith also oversaw the prosecution of many individuals under the Deadbeat Parents Punishment Act, which charges parents who fail to pay court-ordered child support.

The Eastern District of the United States covers 13 states, and includes the cities of Washington, DC, New York City, Boston and Philadelphia. The United States Attorney's Office, with staffed offices in Washington, DC, and New York City, has 32 attorneys and is responsible for conducting all criminal and civil litigation in the district involving the United States government.

Elston, Michael (ODAG)

From: Elston, Michael (ODAG)
Sent: Monday, October 16, 2006 7:12 PM
To: Charlton, Paul (USAAZ)
Subject: Re: When are you getting to DC?

You're off the hook on the second capital case -- although I was told that it was AZ, when I asked for the name of the case it turns out it was another district.

Mike

-----Original Message-----
From: Charlton, Paul (USAAZ)
To: Elston, Michael (ODAG)
Sent: Mon Oct 16 17:29:06 2006
Subject: Re: When are you getting to DC?

Mike - try me on my cell. I'm plugged in now.

Thx

-----Original Message-----
From: Elston, Michael
Sent: Monday, October 16, 2006 05:15 PM Eastern Standard Time
To: Charlton, Paul (USAAZ)
Subject: Re: When are you getting to DC?

Could we meet at 8 for coffee near DOJ?

-----Original Message-----
From: Charlton, Paul (USAAZ)
To: Elston, Michael (ODAG)
Sent: Mon Oct 16 16:34:54 2006
Subject: RE: When are you getting to DC?

Just landed with a dying cell battery.
Paul

-----Original Message-----
From: Elston, Michael
Sent: Monday, October 16, 2006 04:05 PM Eastern Standard Time
To: Charlton, Paul (USAAZ)
Subject: When are you getting to DC?

I would like to talk with you before the subcommittee starts.

Elston, Michael (ODAG)

From: Sampson, Kyle
Sent: Tuesday, October 17, 2006 3:21 PM
To: Elston, Michael (ODAG)
Subject: FW: United States Attorneys

See below for my list of U.S. Attorneys we should consider replacing. Does it match up with yours.

-----Original Message-----

From: Harriet_Miers@who.eop.gov [mailto:Harriet_Miers@who.eop.gov]
Sent: Sunday, September 17, 2006 3:15 PM
To: Sampson, Kyle
Subject: RE: United States Attorneys

Kyle, thanks for this. I have not forgotten I need to follow up on the info, but things have been crazy. Will be back in touch!

-----Original Message-----

From: Kyle.Sampson@usdoj.gov [mailto:Kyle.Sampson@usdoj.gov]
Sent: Wednesday, September 13, 2006 4:23 PM
To: Miers, Harriet
Subject: RE: United States Attorneys

Harriet, the U.S. Attorney ranks currently break down as follows:

I. Vacancies w/o Candidates

D. Alaska
E.D. Tenn.
S.D.W.V.

II. USAs Who Have Been (Or Will Be) Nominated for Other Things (I am strongly of the view that we should be working now to get their replacements selected and in the pipeline)

III. USAs Who, Rumor Has It, Will Be Leaving in Coming Months

IV. USA in the Process of Being Pushed Out

E.D. Ark. (Bud Cummins)

V. USAs We Now Should Consider Pushing Out

D. Ariz. (Paul Charlton)
S.D. Cal. (Carol Lam)

W.D. Mich. (Margaret Chiara)
D. Nev. (Dan Boqden)

W.D. Wash. (John McKay)

VI. Summary

I am only in favor of executing on a plan to push some USAs out if we really are ready and willing to put in the time necessary to select candidates and get them appointed -- it will be counterproductive to DOJ operations if we push USAs out and then don't have replacements ready to roll immediately. In addition, I strongly recommend that, as a matter of Administration policy, we utilize the new statutory provisions that authorize the AG to make USA appointments. We can continue to do selection in JSC, but then should have DOJ take over entirely the vet and appointment. By not going the PAS route, we can give far less deference to home-State Senators and thereby get (1) our preferred person appointed and (2) do it far faster and more efficiently, at less political cost to the White House.

Let me know when you have read this; I have one follow up item I would want to do over the phone. What say you?

Kyle

-----Original Message-----

From: Harriet_Miers@who.eop.gov [mailto:Harriet_Miers@who.eop.gov]

Sent: Wednesday, September 13, 2006 2:39 PM

To: Sampson, Kyle

Subject: United States Attorneys

Kyle, any current thinking on holdover U. S. Attorneys? Any recent word on [redacted]'s intentions?

Elston, Michael (ODAG)

From: Elston, Michael (ODAG)
Sent: Tuesday, October 17, 2006 3:36 PM
To: Sampson, Kyle
Subject: Re: United States Attorneys

Very much so -- I may have a few additions when I get back to my desk.

-----Original Message-----

From: Sampson, Kyle
To: Elston, Michael (ODAG)
Sent: Tue Oct 17 15:20:55 2006
Subject: FW: United States Attorneys

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Elston, Michael (ODAG)

From: Sampson, Kyle
Sent: Tuesday, November 07, 2006 6:21 PM
To: Elston, Michael (ODAG)
Subject: U.S. Attorney Replacement Plan

Importance: High

Attachments: USA replacement plan.doc

Please review and provide comments ASAP. I'd like to get this to Harriet tonight, if possible. I've pasted it into the e-mail for your convenience.

**PLAN FOR REPLACING CERTAIN
UNITED STATES ATTORNEYS**

November 7, 2006

STEP 1

U.S. Attorney calls: On or about November 8-10, Mike Battle contacts the following U.S. Attorneys:

- Paul Charlton (D. Ariz.)
- Carol Lam (S.D. Cal.)
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- Margaret Chiara (W.D. Mich.)
- Dan Bogden (D. Nev.)
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- John McKay (W.D. Wash.)
- David Iglesias (D.N.M.)

Battle informs the U.S. Attorneys as follows:

- What are your plans with regard to continued service as U.S. Attorney?
- The Administration is grateful for your service as U.S. Attorney, but has determined to give someone else the opportunity to serve as U.S. Attorney in your district for the final two years of the Administration.
- We will work with you to make sure that there is a smooth transition, but intend to have a new Acting or Interim U.S. Attorney in place by January 1st.

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- Jon Kyl (re Charlton)
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-
- John Ensign (re Bogden)
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- Pete Domenici (re Iglesias)

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- The Administration has determined to give someone else the opportunity to serve as U.S. Attorney in [relevant district] for the final two years of the Administration. [If pushed, this determination is based on a thorough review of the U.S. Attorney's performance.]
- [Relevant U.S. Attorney] has been informed of this determination and knows that we intend to have a new Acting or Interim U.S. Attorney in place by the end of the year.
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DAG000000550

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Elston, Michael (ODAG)

From: Elston, Michael (ODAG)
Sent: Tuesday, November 07, 2006 6:24 PM
To: McNulty, Paul J
Subject: Fw: U.S. Attorney Replacement Plan

Importance: High

Attachments: USA replacement plan.doc

-----Original Message-----

From: Sampson, Kyle
To: Elston, Michael (ODAG)
Sent: Tue Nov 07 18:21:01 2006
Subject: U.S. Attorney Replacement Plan

Please review and provide comments ASAP. I'd like to get this to Harriet tonight, if possible. I've pasted it into the e-mail for your convenience.

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DAG000000554

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Elston, Michael (ODAG)

From: Elston, Michael (ODAG)
Sent: Tuesday, November 07, 2006 6:29 PM
To: Sampson, Kyle
Subject: Re: U.S. Attorney Replacement Plan

This looks fine to me -- trying to get Paul's input as well.

The only concern I have is that Paul just visited and asked that not be on the list. He does seem to be running things well (if somewhat independent of DOJ). On the other hand, Matt mentioned a scandal rumor that is of great concern to me. Should we mark him as tentative while we talk that out?

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Elston, Michael (ODAG)

From: Sampson, Kyle
Sent: Tuesday, November 07, 2006 6:46 PM
To: Elston, Michael (ODAG)
Subject: Re: U.S. Attorney Replacement Plan

Yes. And I'll wait for the DAG's input (but no longer than tomorrow).

Sent from my BlackBerry Wireless Handheld

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Elston, Michael (ODAG)

From: Goodling, Monica
Sent: Wednesday, November 15, 2006 4:48 PM
To: Blomquist, Kathleen M; Sampson, Kyle; Elston, Michael (ODAG)
Subject: RE: USA Kevin Ryan question needing a response

Kat - As a general matter, we do not comment on these sort of personnel questions (we have received others like it this year since many of the U.S. Attorneys have passed the four year mark). Traditionally, OPA's response has been something simple like, "All U.S. Attorneys serve at the pleasure of the President, and we do not comment on personnel matters."

Kyle/Mike - Any desire to say anything different here?

(P.S. Technically, yes, it is a four year term but there is an automatic hold-over provision, so the four year term does not really mean anything and a large number of our USAs are serving well past their four year mark.)

From: Blomquist, Kathleen M
Sent: Wednesday, November 15, 2006 2:46 PM
To: Goodling, Monica
Subject: USA Kevin Ryan question needing a response

Hi Monica,

How should we respond to questions about the status of Kevin Ryan?

Thanks,

kat

From: Hale, Laura K
Sent: Wednesday, November 15, 2006 2:25 PM
To: Smith, Kimberly A
Subject: Peter Blumberg, San Francisco Daily Journal,

He wanted to know if Kevin Ryan, the USA for the Northern District of California, is going to be reappointed or replaced. His term was up in July.

Kathleen Blomquist
Office of Public Affairs
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
202/514-2007

Elston, Michael (ODAG)

From: Sampson, Kyle
Sent: Wednesday, November 15, 2006 4:58 PM
To: Goodling, Monica; Blomquist, Kathleen M; Elston, Michael (ODAG)
Subject: Re: USA Kevin Ryan question needing a response

I agree w/ Monica's proposed response.

Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Goodling, Monica
To: Blomquist, Kathleen M; Sampson, Kyle; Elston, Michael (ODAG)
Sent: Wed Nov 15 16:47:57 2006
Subject: RE: USA Kevin Ryan question needing a response

Kat - As a general matter, we do not comment on these sort of personnel questions (we have received others like it this year since many of the U.S. Attorneys have passed the four year mark). Traditionally, OPA's response has been something simple like, "All U.S. Attorneys serve at the pleasure of the President, and we do not comment on personnel matters."

Kyle/Mike - Any desire to say anything different here?

(P.S. Technically, yes, it is a four year term but there is an automatic hold-over provision, so the four year term does not really mean anything and a large number of our USAs are serving well past their four year mark.)

From: Blomquist, Kathleen M
Sent: Wednesday, November 15, 2006 2:46 PM
To: Goodling, Monica
Subject: USA Kevin Ryan question needing a response

Hi Monica,

How should we respond to questions about the status of Kevin Ryan?

Thanks,

kat

From: Hale, Laura K
Sent: Wednesday, November 15, 2006 2:25 PM
To: Smith, Kimberly A
Subject: Peter Blumberg, San Francisco Daily Journal,

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Kathleen Blomquist
Office of Public Affairs
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
202/514-2007

Elston, Michael (ODAG)

From: Blomquist, Kathleen M
Sent: Wednesday, November 15, 2006 4:59 PM
To: Sampson, Kyle; Goodling, Monica; Elston, Michael (ODAG)
Subject: RE: USA Kevin Ryan question needing a response

Sounds good.

-----Original Message-----

From: Sampson, Kyle
Sent: Wednesday, November 15, 2006 4:58 PM
To: Goodling, Monica; Blomquist, Kathleen M; Elston, Michael (ODAG)
Subject: Re: USA Kevin Ryan question needing a response

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Sent from my BlackBerry Wireless Handheld

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U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
202/514-2007

Elston, Michael (ODAG)

From: Elston, Michael (ODAG)
Sent: Wednesday, November 15, 2006 5:57 PM
To: Sampson, Kyle; Goodling, Monica; Blomquist, Kathleen M
Subject: Re: USA Kevin Ryan question needing a response

I agree as well.

-----Original Message-----

From: Sampson, Kyle
To: Goodling, Monica; Blomquist, Kathleen M; Elston, Michael (ODAG)
Sent: Wed Nov 15 16:57:51 2006
Subject: Re: USA Kevin Ryan question needing a response

I agree w/ Monica's proposed response.

Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Goodling, Monica
To: Blomquist, Kathleen M; Sampson, Kyle; Elston, Michael (ODAG)
Sent: Wed Nov 15 16:47:57 2006
Subject: RE: USA Kevin Ryan question needing a response

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Sent: Wednesday, November 15, 2006 2:46 PM
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Kathleen Blomquist
Office of Public Affairs
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
202/514-2007

ROUTING AND TRANSMITTAL SLIP		DATE
		November 16, 2006
TO: (Name, office symbol, room number, Agency/Post)	Initials	Date
Mike Elston		
Mike Scudder		
REMARKS: See attached per Bill Mercer <small>DO NOT use this form as a RECORD of approvals, concurrences, disosals, clearances, and similar actions.</small>		
FROM: (Name, org. symbol, Agency/Post)	Room No. -Bldg.	
Bill Mercer	Phone No. 202-514-9500	

Mike Elster
FYI

cc: Sudder

CONGRESS-ADMINISTRATION:

Political Motives Suspected As Jobs On Bench Go Unfilled (SEATIMES)

By David Bowermaster, Seattle Times staff reporter

The Seattle Times, November 15, 2006

Despite a process designed to keep politics out of judicial selections, some in the local legal community are wondering whether politics is behind a delay by the White House in filling two vacancies on the U.S. District Court in Western Washington.

A seat on the federal bench in Tacoma has been open since March 2005, and a seat on the federal bench in Seattle opened in July.

In both cases, a bipartisan panel of local attorneys screened applicants and sent three recommendations to the White House; since 1997, the president has picked his nominee from among three names chosen by such panels.

But the White House, in an unprecedented move, rejected all three candidates for the Tacoma vacancy. The office of White House Counsel Harriet Miers ~~told the bipartisan panel that none of the candidates was sufficiently qualified and asked for three more nominees.~~

The decision troubled many local lawyers and judges who know the three spurned finalists. Sources close to the selection process, speaking on condition of anonymity, called the White House decision "appalling," "outrageous" and a "travesty," and suspect the White House already has a replacement in mind who was not on the list.

Republicans and Democrats alike said the candidates rejected by the White House were eminently qualified. One, confirmed by sources as Karen Strombom, is already a federal magistrate judge in Tacoma.

A new set of candidates for the Tacoma vacancy was sent to the White House in August, around the same time that candidates for the Seattle opening were proposed, sources said. A nomination still hasn't been made by the White House.

Finalists for the federal bench

A bipartisan panel of local lawyers has selected three candidates for a judicial vacancy on the U.S. District Court in Seattle. The White House did interviews in September but has yet to name a nominee. The finalists:

Marc Boman: Partner, Perkins Coie. Specialist in commercial litigation. Recipient of Washington State Bar Association's "Award of Merit" for long-term service to the bar. Served on Seattle Ethics and Election Commission from 1995 to 1998.

Richard Jones: King County Superior Court judge since 1994. Named 2004 "Judge of the Year" by King County Bar Association and Washington State Bar Association. Assistant U.S. attorney in Seattle, 1988 to 1994, associate at Bogle & Gates, 1983 to 1987.

Michael Rickert: Skagit County Superior Court judge since 1992. Previously Skagit County prosecutor, 1986 to 1992.

Source: Seattle Times reporting

The finalists for the Seattle opening have heard nothing since they were interviewed by the White House in September. Nor has the selection committee, said co-chairs Jenny Durkan of Seattle and J. Vander Stoep of Chehalis.

According to several sources close to the merit panel, the candidates selected for the Seattle vacancy were King County Superior Court Judge Richard Jones, Skagit County Superior Court Judge Michael Rickert and Marc Boman, a partner at the Perkins Coie law firm.

Rickert confirmed he was interviewed at the White House on Sept. 6. Jones and Boman declined to comment.

"It's an honor to be considered," Rickert said. "To have a dog in the hunt is very nice."

The delay has raised questions in local legal circles about whether the White House might again reject a merit panel's recommendations, or choose its own nominee.

The questions intensified when rumors surfaced that John McKay, the U.S. Attorney for Western Washington, was also interviewed by the White House Counsel's Office. McKay said last summer he applied for the Seattle vacancy, and many local lawyers considered him the front-runner for the job.

The Seattle Times confirmed that McKay traveled to Washington, D.C., to meet with White House officials about the vacancy, but sources said it was not clear if it was a formal job interview.

McKay declined to confirm or deny that the meeting took place.

"I'm not in a position to comment on this midprocess," McKay said. "I'm going to wait for the White House to make a decision along with everybody else."

If President Bush nominates McKay rather than one of the three judges selected by the bipartisan merit panel, it would be the second significant snub of the process by the White House in less than a year, judicial observers said.

DAG000000567

The merit-panel process started in 1997 after an agreement initially hammered out by Democratic Sen. Patty Murray, and former Republican Sen. Slade Gorton and the Clinton administration.

A letter from former White House Counsel Alberto Gonzales to Murray in March 2002 made it clear the Bush administration reserved the right to go its own way with judicial nominations.

"All parties have agreed that [bipartisan panels] can be a source for identifying and evaluating candidates," wrote Gonzales, who is now attorney general. "I also propose that neither the president nor you be bound to adhere to the [panels'] evaluations in all instances."

The White House declined to shed light on any of the developments.

"As far as nominations always go, we don't speculate or comment until the process has been completed and the president is ready to make his announcement," said Peter Watkins, a White House spokesman.

Vander Stoep said he does not know when Bush will select his nominees.

"I know the White House wants to move as quickly as possible, and I know the senators want to move as quickly as possible," Vander Stoep said. Durkan said she is hopeful that the White House will abide by the process that has worked to name judges in Washington for the past decade, but she is not making predictions.

"Any of the candidates [for the Seattle vacancy] would serve the president and the country incredibly well," Durkan said. "But that's what I thought about Tacoma."

Elston, Michael (ODAG)

From: Elston, Michael (ODAG)
Sent: Tuesday, November 21, 2006 8:39 PM
To: Chiara, Margaret M. (USAMIW)

Margaret:

Please give me a call when you have a moment. My cell phone number is

Thanks,
Mike

Michael J. Elston
Chief of Staff and Counselor
to the Deputy Attorney General
950 Pennsylvania Avenue, N.W., Room 4210
Washington, D.C. 20530
(202) 307-2090
(202) 514-9368 (fax)

December 01, 2006 Continued

Friday

9:45 AM - 10:00 AM

10:00 AM - 11:00 AM

11:30 AM - 12:00 PM

12:00 PM - 1:00 PM

2:00 PM - 2:30 PM

Kevin Ryan
paper
to the [signature]

Moschella, William

From: Sampson, Kyle
Sent: Monday, December 04, 2006 6:30 PM
To: McNulty, Paul J; Battle, Michael (USAEO)
Cc: Goodling, Monica; Moschella, William; Elston, Michael (ODAG)
Subject: FW: US Atty Plan
Importance: High
Attachments: USA replacement plan.doc

Paul/Mike, we are a go for Thursday (see below). At this point we likely need to inform Johnny Sutton and Bill Mercer re the plan (so they are not caught unawares) -- Paul, do you want to handle that, or would you like me to? On Thursday, I think we should shoot to get the Senator calls done in the morning, and then have Mike start calling USAs at noon -- let me know if anyone thinks otherwise. Thx.

From: Sampson, Kyle
Sent: Monday, December 04, 2006 6:26 PM
To: 'Kelley, William K.'
Cc: 'Miers, Harriet'
Subject: RE: US Atty Plan

here is the revised plan, per our discussions

From: Sampson, Kyle
Sent: Monday, December 04, 2006 6:12 PM
To: 'Kelley, William K.'
Cc: Miers, Harriet
Subject: RE: US Atty Plan
Importance: High

Great. We would like to execute this on Thursday, December 7 (all the U.S. Attorneys are in town for our Project Safe Childhood conference until Wednesday; we want to wait until they are back home and dispersed, to reduce chatter). So, on Thursday morning, we'll need the calls to be made as follows:

- * AG calls Sen. Kyl
- * Harriet/Bill call Sens. Ensign and Domenici (alternatively, the AG could make these calls and, if Senators express any concern, offer briefings re why the decision was made -- let me know)
- * White House OPA calls California, Michigan, and Washington "leads"

EOUSA Director Mike Battle then will call the relevant U.S. Attorneys. Okay?

From: Kelley, William K. [mailto:William_K_Kelley@who.eop.gov]
Sent: Monday, December 04, 2006 4:48 PM
To: Sampson, Kyle
Cc: Miers, Harriet
Subject: US Atty Plan

We're a go for the US Atty plan. WH leg, political, and communications have signed off and acknowledged that

DAG000000571

3/12/2007

we have to be committed to following through once the pressure comes.

PLAN FOR REPLACING CERTAIN UNITED STATES ATTORNEYS

STEP 1

Senator calls: On December 7, the following Republican home-state Senators or, where there is no Republican home-state Senator, the home-state "Bush political lead" are contacted:

- AG calls **Jon Kyl** (re Charlton)
- WHCO calls **John Ensign** (re Bogden)
- WHCO calls **Pete Domenici** (re Iglesias)
- WH OPA calls **California political lead** (re Lam and Ryan)
- WH OPA calls **Michigan political lead** (re Chiara)
- WH OPA calls **Washington political lead** (re McKay)

AG/WHCO/WH OPA inform the Senators/Bush political leads as follows:

- The Administration has determined to give someone else the opportunity to serve as U.S. Attorney in [relevant district] for the final two years of the Administration.
- [Relevant U.S. Attorney] has been informed of this determination and knows that we intend to have a new Acting or Interim U.S. Attorney in place by January 31, 2007.
- We will look to you, Senator/Bush political lead, to recommend candidates that we should consider for appointment as the new U.S. Attorney. As always, we ask that you recommend at least three candidates for the President's consideration. Importantly, we ask that you make recommendations as soon as possible.

STEP 2

U.S. Attorney calls: On December 7 (very important that Senator calls and U.S. Attorney calls happen simultaneously), Mike Battle contacts the following U.S. Attorneys:

- **Paul Charlton** (D. Ariz.)
- **Carol Lam** (S.D. Cal.)
- **Kevin Ryan** (N.D. Cal.)
- **Margaret Chiara** (W.D. Mich.)
- **Dan Bogden** (D. Nev.)
- **David Iglesias** (D.N.M.)
- **John McKay** (W.D. Wash.)

Battle informs the U.S. Attorneys as follows:

- What are your plans with regard to continued service as U.S. Attorney?
- The Administration is grateful for your service as U.S. Attorney, but has determined to give someone else the opportunity to serve as U.S. Attorney in your district for the final two years of the Administration.
- We will work with you to make sure that there is a smooth transition, but intend to have a new Acting or Interim U.S. Attorney in place by January 31, 2007.

STEP 3

Prepare to Withstand Political Upheaval: U.S. Attorneys desiring to save their jobs (aided by their allies in the political arena as well as the Justice Department community), likely will make efforts to preserve themselves in office. We should expect these efforts to be strenuous. Direct and indirect appeals of the Administration's determination to seek these resignations likely will be directed at: various White House offices, including the Office of the Counsel to the President and the Office of Political Affairs; Attorney General Gonzales and DOJ Chief of Staff Sampson; Deputy Attorney General McNulty and ODAG staffers Moschella and Elston; Acting Associate AG Bill Mercer; EOUSA Director Mike Battle; and AGAC Chair Johnny Sutton. Recipients of such "appeals" must respond identically:

- What? U.S. Attorneys serve at the pleasure of the President (there is no right, nor should there be any expectation, that U.S. Attorneys would be entitled to serve beyond their four-year term).
- Who decided? The Administration made the determination to seek the resignations (not any specific person at the White House or the Department of Justice).
- Why me? The Administration is grateful for your service, but wants to give someone else the chance to serve in your district.
- I need more time! The decision is to have a new Acting or Interim U.S. Attorney in place by January 31, 2007 (granting "extensions" will hinder the process of getting a new U.S. Attorney in place and giving that person the opportunity to serve for a full two years).

STEP 4

Evaluation and Selection of "Interim" Candidates: During December 2006-January 2007, the Department of Justice, in consultation with the Office of the Counsel to the President, evaluates and selects candidates for Attorney General-appointment (or candidates who may become Acting U.S. Attorney by operation of law) to serve upon the resignation of above-listed U.S. Attorneys.

STEP 5

Selection, Nomination, and Appointment of New U.S. Attorneys: Beginning as soon as possible in November 2006, Office of the Counsel to the President and Department of Justice carry out (on an expedited basis) the regular U.S. Attorney appointment process: obtain recommendations from Senators/Bush political leads and other sources; evaluate candidates; make recommendations to the President; conduct background investigations; have President make nominations and work to secure confirmations of U.S. Attorney nominees.



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Darrell Issa
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Issa:

This is in response to your letter dated May 24, 2006, to Carol C. Lam, United States Attorney for the Southern District of California, regarding immigration prosecutions in that district, as well as your request to meet with USA Lam. We apologize for any inconvenience our delay in responding may have caused you.

Please rest assured that the immigration laws in the Southern District of California are being vigorously enforced. Indeed, prosecutions for alien smuggling in Fiscal Year 2006 in the Southern District of California are rising dramatically. As of March 2006, the halfway point in the fiscal year, there were 342 alien smuggling cases filed in that jurisdiction. This compares favorably with the 484 alien smuggling prosecutions brought there during the entirety of Fiscal Year 2005. Moreover, as you are aware, Congress did not fully fund the President's budget request in FY 2006, and this increase in alien smuggling prosecutions in Southern California is being accomplished with the same or fewer number of Assistant United States Attorneys in that Office as in Fiscal Year 2005.

Certainly the U.S. Attorney's Office for the Southern District of California devotes substantial available resources to the prosecution of illegal immigration, and to alien smuggling in particular. Fully half of its 110 Assistant U.S. Attorneys are used to prosecute illegal immigration cases.

Although felony immigration filings in the Southern District of California dropped from FY 2004 to FY 2005, that result flowed from a conscious decision to focus resources on seeking higher sentences for more serious offenders. And, in fact, the number of immigration defendants prosecuted who received prison sentences of between 1-12 months dropped from 896 in 2004 to 338 in 2005, while the number of immigration defendants who received sentences between 37-60 months *rose* from 116 to 246, and the number of immigration defendants who received sentences greater than 60 months *rose* from 21 to 77.

DAG000000576

The Honorable Darrell Issa
Page Two

The effort to obtain higher sentences for the immigration violators who present the greatest threat to the community also results in more cases going to trial, and consequently the expenditure of more attorney time. In FY 2004 the Southern District tried 42 criminal immigration cases; in FY 2005 the District tried 89 criminal immigration cases – substantially more than any other Southwest Border district in 2005.

In addition, the Southern District has devoted substantial resources to investigating and prosecuting border corruption cases which pose a serious threat to both national security and continuing immigration violations. For example, in the past 12 months, the district has investigated and prosecuted seven corrupt Border Patrol agents and CBP officers who were working with alien smuggling organizations. These investigations and prosecutions typically have time-consuming financial and electronic surveillance components.

Please also know that decisions concerning whether to prosecute a given case as an alien smuggling case, or under some related charge, are case specific and very fact based. The number of possible alien smuggling charges that can be filed depends in part on the quality of the matter being referred to the United States Attorney's Office. For example, it is often necessary in an alien smuggling case to make a number of the smuggled aliens available as material witnesses, for the defense as well as the prosecution. If such witnesses are released at the time of the suspect's arrest, the opportunity to prosecute the case as an alien smuggling case, as opposed to a lesser charge, may be lost forever.

With regard to the immigration memo referred to in your letter, we cannot vouch for its authenticity. However, as you well realize, it is not physically possible to prosecute and imprison every single person apprehended on immigration violations. Thus, every United States Attorney's office necessarily uses prosecution guidelines to help identify which cases to prosecute under various circumstances. We have previously outlined for you in earlier correspondence the broad parameters of the guidelines used in the Southern District of California. Public dissemination of the details of such guidelines only serves to undercut law enforcement efforts. We note that the Bureau of Customs and Border Protection was heavily consulted during the drafting of the guidelines and approved of them at the time they were first disseminated.

Finally, we are aware that you recently spoke personally with USA Lam. If you are still interested in a meeting, please let us know.

DAG000000577

The Honorable Darrell Issa
Page Three

Please do not hesitate to contact the Department of Justice if we can be of assistance in other matters.

Sincerely,

William E. Moschella
Assistant Attorney General

DAG000000578

Elston, Michael (ODAG)

From: Goodling, Monica
Sent: Tuesday, December 19, 2006 1:53 PM
To: Sampson, Kyle; Elston, Michael (ODAG); Mercer, William W; Moschella, William; Nowacki, John (USAEO); Battle, Michael (USAEO)
Subject: FW: U.S. ATTORNEY PAUL CHARLTON TO STEP DOWN AT END OF JANUARY
Attachments: 2006-270(Charlton).wpd; 2006-270(Charlton).pdf

FYI

From: Roehrkas, Brian
Sent: Tuesday, December 19, 2006 1:16 PM
To: Goodling, Monica
Subject: FW: U.S. ATTORNEY PAUL CHARLTON TO STEP DOWN AT END OF JANUARY

From: Smith, Kimberly A
Sent: Tuesday, December 19, 2006 1:16 PM
To: Ames, Andrew; Block, Jonathan; Blomquist, Kathleen M; Boyd, Dean; Brian Roehrkas; Clarke, Elizabeth E (OPA); Holland, Eric W; Jean Card; Lesch, Jaclyn; Magnuson, Cynthia; Miller, Charles S; Mitchell, John A; Peterson, Evan; Schwartz, Arthur; Scolinos, Tasia; Sellers, Donna J.; Sierra, Bryan; Smith Kimberly A; Talamona, Gina; Williams, Linda Fitzgerald
Subject: U.S. ATTORNEY PAUL CHARLTON TO STEP DOWN AT END OF JANUARY



FOR IMMEDIATE RELEASE
December 19, 2006

*Office of the United States Attorney
District of Arizona*

For Information Contact Public Affairs
WYN HORNBuckle
Telephone: (602) 514-7625
Cell: (602) 525-2681

U.S. ATTORNEY PAUL CHARLTON TO STEP DOWN AT END OF JANUARY

PHOENIX – U.S. Attorney Paul K. Charlton has announced he will resign his position as the U.S. Attorney for the District of Arizona and take a position as a partner with the firm of Gallagher and Kennedy, P.A. Charlton will step down at the end of January after more than five years as U.S. Attorney in which his office addressed many pressing challenges posed by terrorism, public corruption, illegal immigration, methamphetamine, and ensuring the rights of victims of federal crimes, among many others.

"Paul Charlton has been an extraordinary public servant during a time of grave challenge to our national security," said U.S. Senator Jon Kyl. "We will miss his strong and principled leadership."

USA Charlton made the announcement to his staff Monday afternoon. "I am immensely proud of what the men and women of this office have accomplished over the past five years," Charlton stated. "I am grateful to the President, the Department of Justice and Arizona's dedicated law enforcement community for this incredible opportunity to serve. I'm excited to open a new chapter in my career, and to face the very new and different challenges of private practice."

Paul K. Charlton was appointed U.S. Attorney by President George W. Bush on November 12, 2001 and confirmed by the United States Senate. In the wake of the 9/11 terrorist attacks, Charlton established the Anti-Terrorism Task Force (now called ATAC - the Anti-Terrorism Advisory Council), which has improved statewide law enforcement communication and coordination to fight terrorism and explored how to better secure nuclear power plants, water supply, air travel, rail transportation, and computer security. In 2006, Charlton established a National Security Division within the U.S. Attorney's Office to actively work with law enforcement agencies on terrorism related criminal cases.

FBI Special Agent in Charge of the Phoenix Division John E. Lewis stated: "Paul Charlton has supported the FBI's investigative efforts on many fronts and has been most proactive concerning the Bureau's number one priority, protecting the United States from terrorist attacks. As the FBI works with many law enforcement agencies concerning terrorism matters, USA Charlton has dedicated resources to support terrorism investigations and other national security issues. I applaud and appreciate USA Charlton's work as he has served the District of Arizona."

"Paul Charlton has served Arizona exceptionally well over the last five years," said Arizona Attorney General Terry Goddard. "He has forged partnerships across state, local and federal jurisdiction, and this has made Arizona a safer place to live."

Another chief goal of USA Charlton has been to advocate for the rights of federal crime victims. He expanded the Victim Advocate staff in his office to better serve crime victims. In 2002, the

-MORE-

DAG000000580

U.S. Attorney's Office Victim Witness Program was awarded the Federal Service Award and this December the U.S. Department of Justice announced that the Arizona U.S. Attorney's Office would serve as a national "Model Program."

In an effort to address the growing problems posed by methamphetamine, in the summer of 2005, Charlton met with Arizona federal and tribal law enforcement agencies to discuss how to confront the methamphetamine problems in Indian Country. After gaining commitments for assistance from federal and tribal law enforcement, he consulted with and invited Arizona's 21 tribes to participate in the Arizona Indian Country Methamphetamine Eradication Initiative. Since then, numerous Indian tribes have engaged in the Initiative, resulting in multiple arrests of methamphetamine dealers in the Navajo Nation, the Salt River Pima-Maricopa Indian Community, the San Carlos Apache and the White Mountain Apache tribal communities.

"Paul has proven time and time again to be an outstanding law enforcement leader for the people of Arizona," said DEA Special Agent in Charge Timothy J. Landrum. "I have developed a strong personal and professional relationship with Paul. His innovative initiatives to combat crime on tribal lands and to battle the scourge of methamphetamine will leave a standing legacy that other federal districts will strive to emulate. His dedication to protecting the people of Arizona and the United States will be missed, but never forgotten."

In 2004, USA Charlton joined U.S. Attorneys in Utah, New Mexico, and Colorado to address Indian tribal concerns over the damage, theft, and trafficking in cultural patrimony and archeological resources. Together they initiated a 90-day amnesty from federal prosecution, resulting in telephone tips and returns of cultural patrimony belonging to tribes throughout the Southwest.

"It is with regret that the Inter Tribal Council of Arizona extends its heart felt good wishes to Paul Charlton," said Inter Tribal Council Executive Director John Lewis. "Paul has proven to be very responsive to the law enforcement needs of tribal governments in Arizona. He understands the sovereign status of the tribes and the U.S. Government's commitment to recognize this status and at the same time the need to carry out the U.S. Government's constitutional directed responsibility of Trust for Indian tribes. He will be greatly missed."

U.S. Attorney Charlton made public corruption cases a priority, sending a clear message that the U.S. Attorney's Office would hold public officials to the highest standards of ethical conduct. He joined with federal, state, and local law enforcement to identify, investigate, and aggressively prosecute corrupt public officials. This included several successful prosecutions of corrupt border officials, such as Fernando Arango and Michael Anderson, who received stiff penalties for taking bribes from and assisting narcotics traffickers.

"U.S. Attorney Paul Charlton has been a steadfast supporter of law enforcement and has played a tremendous part in the United States Border Patrol's efforts in bringing control to our nation's borders," stated National Border Patrol Chief David V. Aguilar, the chief Border Patrol officer for the United States. "The void left by U.S. Attorney Charlton's departure will be one that will be felt by the entire law enforcement community. Arizona can and should be proud of Mr. Charlton for what he has done for his country and state during his tenure."

-MORE-

DAG000000581

USA Charlton also worked to build the capacity of the U.S. Attorney's Office to address pressing issues of illegal immigration, drug trafficking, and crimes in Indian Country. In 2002, Charlton made temporary offices in Yuma and Flagstaff permanent, and during his tenure he brought on 16 new Assistant U.S. Attorney positions. Under his leadership, the U.S. Attorney's Office expanded prosecutions, increasing the number of criminal cases charged in federal district court from 3,979 in fiscal year 2001 to 5,026 in FY 2005.

Arizona Department of Public Safety Director Roger Vanderpool stated: "The law enforcement community is losing a great partner. Paul has shown he is a man of great integrity. He is a proven leader and will be missed."

Cochise County Sheriff Larry A. Dever stated: "I was saddened to hear Paul is leaving us. He has served Arizona law enforcement and the people of the State of Arizona in the highest traditions of the office. It has been a great honor to work with him over the past several years and I will miss my friend. We wish him the best in his new endeavor."

The Attorney General will appoint an interim U.S. Attorney who will serve until such time as the President nominates and the Senate confirms a new U.S. Attorney. In the interim, USA Charlton pledged to work with the Department of Justice and Arizona's law enforcement community to ensure a smooth transition.

###

Elston, Michael (ODAG)

From: Chiara, Margaret M. (USAMIW) [MM.Chiara@usdoj.gov]
Sent: Wednesday, January 10, 2007 6:44 AM
To: Elston, Michael (ODAG)
Subject: FW: Status Report

FYI: As requested, I will keep you informed by copying you on future updates to DAG Paul McNulty. MMC

From: Chiara, Margaret M. (USAMIW)
Sent: Saturday, January 06, 2007 8:08 PM
To: McNulty, Paul J
Subject: Status Report

As promised, this is the first status report, with periodic updates to follow, on progress made to secure employment. Numerous applications have been submitted. resumes circulated and contacts made in Michigan, the Washington area and South Carolina.

Mike Battle contacted me about available Immigration Judge positions. I had ample time over the holidays to research the option and to consult with persons who are knowledgeable about these particular courts. While there is a strong inclination to settle this situation quickly by any means possible, I have concluded that the Immigration Judge would be the wrong "next step" for me. Thank you for providing the alternative.

Here are three possibilities within DOJ where your assistance would be helpful. (1) OIG Attorney-Advisor GS-0905-14/15. Application deadline is January 8. (2) SMART Office at OJP. I am aware that SMART Director Laura Rogers will need assistance implementing the "Adam Walsh" mandate. I have already contacted Ms. Rogers indicating my interest in such an assignment. Note that I previously contact Assistant AG Regina Schofield regarding employment options at OJP. Actually, OJP is the DOJ entity for which my experience and current interest are most suited. (3) NAC options which I realize presently do not exist due to funding constraints. Also, I have contacted OPR Director Marshall Jarrett regarding organizational opportunities. Currently, the only position available is a one year detail. Given my considerable OPR experience as a USA, I am confident that I could make a useful contribution if a permanent staff position were made available.

Thank you for accompanying me on this journey! Margaret

Elston, Michael (ODAG)

From: Goodling, Monica
Sent: Thursday, January 11, 2007 5:28 PM
To: Scolinos, Tasia; Roehrkas, Brian; Sampson, Kyle; Elston, Michael (ODAG); Moschella, William
Subject: Draft talkers
Attachments: Appointments.doc



Appointments.doc
(32 KB)

U.S. Attorney Appointments by the Attorney General:

- United States Attorneys serve at the pleasure of the President, and whenever a vacancy occurs, we act to fill it in compliance with our obligations under the Constitution, the laws of the United States, and in consultation with the home-state Senators in the region. The Senators have raised concerns based on a misunderstanding of the facts surrounding the resignations of a handful of U.S. Attorneys, each of whom have been in office for their full four year term or more.
- When a United States Attorney submits his or her resignation, the Administration has -- in every case -- consulted with home-state Senators regarding candidates for the Presidential nomination and Senate confirmation. The Administration continues to be committed to working to nominate a candidate for Senate consideration in every case that a vacancy is created, as evidenced by the fact that there have been 125 confirmations of new U.S. Attorneys since January 20, 2001.
- With 93 U.S. Attorney positions across the country, the Department has often averaged between 8-15 vacancies at any given time. Because of the important work conducted by these offices, and the need to ensure that the office is being managed effectively and appropriately, the Department uses a range of options to ensure continuity of operations.
- In some cases, the First Assistant U.S. Attorney is an appropriate choice. However, in other cases, the First Assistant may not be an appropriate option for reasons including that he or she: resigns or retires at the same time as the outgoing U.S. Attorney; indicates that he/she does not want to serve as Acting; has ongoing or completed OPR or IG matters in their file, which may make his/her elevation to the Acting role inappropriate; or is subject of an unfavorable recommendation by the outgoing U.S. Attorney or otherwise does not enjoy the confidence of those responsible for ensuring ongoing operations and an appropriate transition until such time as a new U.S. Attorney is nominated and confirmed by the Senate. In those cases, the Attorney General has appointed another individual to lead the office during the transition.

Usage Since the Change in the Law:

- Since March 9, 2006, when the appointment authority was amended, there have been 11 vacancies created by outgoing U.S. Attorneys. Of the 11 vacancies, the Administration nominated candidates to fill four of these positions and has interviewed candidates for the other 7 positions.

- The 11 vacancies were filled as follows:
 - In 5 cases, the First Assistant was selected to lead the office and took over under the Vacancy Reform Act's provision at: 5 U.S.C. § 3345(a)(1). That authority is limited to 210 days, unless a nomination is made during that period.
 - In 5 cases, the Department selected another Department employee to serve as interim.
 - In 1 case, the First Assistant resigned at the same time as the U.S. Attorney, creating a need for an interim.

The Statute:

- We are aware of no other federal agency where federal judges, members of a separate branch of government and not the head of the agency, appoint staff on behalf of the agency. In early 2006, the statute that authorizes the appointment of interim United States Attorneys (28 U.S.C. § 546) was amended by section 502 of Public Law 109-177 to eliminate the provision of a 120-day appointment. Due to the change in the law, the Attorney General now appoints interim United States Attorneys to serve until the nomination and confirmation of a United States Attorney under 28 U.S.C. § 541. The way the statute previously worked was that, in the case of an AG interim appointment, the federal district judge appointed the U.S. Attorney after 120 days.
- The statute was amended for several reasons: 1) the previous provision was unconstitutional and the Senate respects the Constitution; 2) some federal judges, recognizing the inherent problems, have refused to do appoint, creating a situation where the Attorney General had to do multiple 120-day appointments; 3) a small number of federal judges, disregarding the Constitutional issues, attempted to appoint individuals other than those proposed by the Department – in one case, someone who had never been a federal government official and hence had never been subject of the standard U.S. Attorney national security clearance process.

Elston, Michael (ODAG)

From: Elston, Michael (ODAG)
Sent: Tuesday, January 16, 2007 5:27 PM
To: Sampson, Kyle; Goodling, Monica; McNulty, Paul J
Subject: FW: USA Lam

From: Long, Linda E
Sent: Tuesday, January 16, 2007 5:26 PM
To: Elston, Michael (ODAG)
Subject: USA Lam

Phone call from USA Lam's office to notify that she has faxed her resignation to Debbie Hardos/EOUSA - with original copy overnight mail. DAG has been advised. Linda

Elston, Michael (ODAG)

From: Beste, Eric (USACAS) [Eric.Beste@usdoj.gov]
Sent: Tuesday, January 16, 2007 5:42 PM
To: Elston, Michael (ODAG)
Subject: FW:

FYI

From: Lam, Carol (USACAS)
Sent: Tuesday, January 16, 2007 2:14 PM
To: USACAS-ALL-SAN-DIEGO
Subject:

Today I am submitting a letter to the President of the United States tendering my resignation as the United States Attorney for the Southern District of California, effective February 15, 2007.

For the past four and a half years, I have had the great fortune of heading an office staffed by some of the most talented and experienced attorneys and staff in the nation. In that time, the office has continued its commitment to protecting the border and prosecuting and defending criminal and civil cases in a number of other important areas. It has been an experience that I will always look back on with great pride, and with great affection for each and every one of you.

Thank you all for your good work. I look forward to talking to each of you during the next few weeks.

Carol

DAG000000587

3/13/2007

Elston, Michael (ODAG)

From: Elston, Michael (ODAG)
Sent: Wednesday, January 17, 2007 4:05 PM
To: Mercer, William W
Subject: Cummins

He says you do not need to call him back.

Elston, Michael (ODAG)

From: Elston, Michael (ODAG)
Sent: Wednesday, January 17, 2007 5:37 PM
To: Charlton, Paul (USAAZ)
Subject: Please call when you have a minute

Thanks. 202-307-2090

1125135
DA



U.S. Department of Justice

United States Attorney
District of Nevada

Daniel G. Bogden
United States Attorney

333 Las Vegas Boulevard South
Suite 3000
Las Vegas, Nevada 89101

Telephone (702) 388-6336
FAX: (702) 388-6296

January 17, 2007

The Attorney General
United States Department of Justice
Main Justice Building, Room 5111
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

I am hereby submitting my resignation as United States Attorney for the District of Nevada, effective midnight February 28, 2007. It has been a great honor and privilege to have served the past five and one-half years as a United States Attorney, initially by appointment of Attorney General John Ashcroft and thereafter by Presidential appointment.

Serving the United States as a United States Attorney has been the highest honor and most fulfilling duty of my public career. Thank you for your support and the support of the Department of Justice during my tenure.

I deeply appreciate the opportunity to have served as the United States Attorney for the District of Nevada. I wish you the best of luck and success.

Sincerely,

A handwritten signature in cursive script that reads "Daniel G. Bogden".

DANIEL G. BOGDEN
United States Attorney
District of Nevada

DAG000000590

Elston, Michael (ODAG)

From: Elston, Michael (ODAG)
Sent: Thursday, January 18, 2007 10:58 AM
To: Sampson, Kyle; Moschella, William; Goodling, Monica
Cc: Mercer, William W; McNulty, Paul J
Subject: USAO-NDCA

Kyle:

Kevin Ryan's FAUSA, Eumi Choi, just called to let us know that Kevin is not returning calls from Sen. Feinstein or Carol Lam and doing his best to stay out of this. He wanted us to know that he's still a "company man." I gave her my talkers for McKay and Charlton and asked her to convey them to Kevin.

Mike

Elston, Michael (ODAG)

From: Sampson, Kyle
Sent: Thursday, January 25, 2007 5:34 PM
To: Hertling, Richard; Seidel, Rebecca; Goodling, Monica; Nowacki, John (USAEO)
Cc: Moschella, William; Elston, Michael (ODAG); Scott-Finan, Nancy
Subject: RE: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

Importance: High

Will/Mike, I think that the DAG should be the witness. We need to be serious and hit back hard. Will you ask him if he is willing?

From: Hertling, Richard
Sent: Thursday, January 25, 2007 5:23 PM
To: Seidel, Rebecca; Sampson, Kyle; Goodling, Monica; Nowacki, John (USAEO)
Cc: Moschella, William; Elston, Michael (ODAG); Scott-Finan, Nancy
Subject: RE: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

we need to decide who our witness will be

From: Seidel, Rebecca
Sent: Thursday, January 25, 2007 4:02 PM
To: Sampson, Kyle; Goodling, Monica; Nowacki, John (USAEO); Hertling, Richard
Cc: Moschella, William; Elston, Michael (ODAG); Scott-Finan, Nancy
Subject: FW: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

here is the notice for the hearing on the USA issue.

From: Butterfield, Jane (Judiciary-Rep) [mailto:Jane_Butterfield@judiciary-rep.senate.gov]
Sent: Thursday, January 25, 2007 8:56 AM
To: White, Brandi (Frist); Andrea Looney (Whitehouse); Bacak, Brooke (RPC); Bellocchi, Luke (RPC); Best, David T; Dianna Dunne (Whitehouse); Hicks, Allen (Frist); Hippe, Jim (Frist); Janette Evans-Lee ; Jeri Gronewold; Mark Braswell; Michael Allen (Whitehouse); Moschella, William; Seidel, Rebecca; Stout, Stacey L; Kebodeaux, Tiffany (DHS); Dewine; Peterlin,

January 25, 2007

NOTICE OF FULL COMMITTEE HEARING

The Senate Committee on the Judiciary has scheduled a hearing on
"Preserving Prosecutorial

**Independence: Is the Department of Justice Politicizing the Hiring and Firing of
U.S. Attorneys?"**

for Wednesday, February 7, 2007 at 9:30 a.m. in Room 226 of the Dirksen Senate
Office Building.

Senator Schumer will chair the hearing.

By order of the Chairman

Elston, Michael (ODAG)

From: Nowacki, John (USAEO) [John.Nowacki@usdoj.gov]
Sent: Thursday, January 25, 2007 5:39 PM
To: Seidel, Rebecca; Sampson, Kyle; Goodling, Monica; Moschella, William; Elston, Michael (ODAG)
Cc: Scott-Finan, Nancy; Bounds, Ryan W (OLP)
Subject: FW: SJC hearing on USA issue

I should clarify that these are AG-appointed interim USA's. We have one court-appointed USA (Paula Silsby, District of Maine) and three Acting USA's under the VRA (George Cardona, Central California; Randy Massey, Southern Illinois; and Judi Whetstine, Northern Iowa).

From: Nowacki, John (USAEO)
Sent: Thursday, January 25, 2007 5:28 PM
To: Seidel, Rebecca; Sampson, Kyle; Goodling, Monica; Moschella, William; Elston, Michael (ODAG)
Cc: Scott-Finan, Nancy; Bounds, Ryan W (OLP)
Subject: RE: SJC hearing on USA issue

The currently-serving interim USA's are:

District of Alaska – Nelson Cohen
Eastern District of Arkansas – Tim Griffin
District of Columbia – Jeff Taylor
Western District of Missouri – Brad Schlozman
District of Nebraska – Joe Stecher
District of Puerto Rico – Rosa Rodriguez-Velez
Eastern District of Tennessee – Russ Dedrick
Middle District of Tennessee – Craig Morford
Southern District of West Virginia – Chuck Miller

From: Seidel, Rebecca
Sent: Thursday, January 25, 2007 5:10 PM
To: Sampson, Kyle; Goodling, Monica; Moschella, William; Elston, Michael (ODAG); Nowacki, John (USAEO)
Cc: Scott-Finan, Nancy; Bounds, Ryan W (OLP); Seidel, Rebecca
Subject: SJC hearing on USA issue

Just got off the phone with Matt Miner on Specter's staff who called to discuss the hearing. He said we will be getting an invite shortly. Has there been further thought on the DOJ witness? The DAG?

He asked for a few things (info for some is in the talking points, let me know what else we have):

- 1) names of currently serving interims and where they are serving
- 2) # of interim appointments
- 3) any data we have about the Vacancy Act and appointments
- 4) suggestions for witnesses for 2nd panel

Re the bill - he is organizing a Republican amendment strategy so that they have one strategy and the Dems don't divide and conquer. He asked if we have any amendments to please draft and get them to him.

I re-sent him the talking points (as he had given his copy away - he realized we had a lot of info in there).

Elston, Michael (ODAG)

From: Sampson, Kyle
Sent: Thursday, January 25, 2007 5:53 PM
To: Moschella, William
Cc: Elston, Michael (ODAG)
Subject: RE: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

hah. let me know what he says.

From: Moschella, William
Sent: Thursday, January 25, 2007 5:45 PM
To: Sampson, Kyle
Cc: Elston, Michael (ODAG)
Subject: RE: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

are you crazy? no way, you ask him! . . .

Of course we will raise it with him.

From: Sampson, Kyle
Sent: Thursday, January 25, 2007 5:34 PM
To: Hertling, Richard; Seidel, Rebecca; Goodling, Monica; Nowacki, John (USAEO)
Cc: Moschella, William; Elston, Michael (ODAG); Scott-Finan, Nancy
Subject: RE: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.
Importance: High

Will/Mike, I think that the DAG should be the witness. We need to be serious and hit back hard. Will you ask him if he is

willing?

From: Hertling, Richard
Sent: Thursday, January 25, 2007 5:23 PM
To: Seidel, Rebecca; Sampson, Kyle; Goodling, Monica; Nowacki, John (USAEO)
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Subject: RE: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

we need to decide who our witness will be

From: Seidel, Rebecca
Sent: Thursday, January 25, 2007 4:02 PM
To: Sampson, Kyle; Goodling, Monica; Nowacki, John (USAEO); Hertling, Richard
Cc: Moschella, William; Elston, Michael (ODAG); Scott-Finan, Nancy
Subject: FW: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

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Sent: Thursday, January 25, 2007 8:56 AM
To: White, Brandi (Frist); Andrea Looney (Whitehouse); Bacak, Brooke (RPC); Bellocchi, Luke (RPC); Best, David T; Dianna Dunne (Whitehouse); Hicks, Allen (Frist); Hippe, Jim (Frist); Janette Evans-Lee ; Jeri Gronewold; Mark Braswell; Michael Allen (Whitehouse); Moschella, William; Seidel, Rebecca; Stout, Stacey L; Kebodeaux, Tiffany (DHS); Dewine; Peterlin,

January 25, 2007

NOTICE OF FULL COMMITTEE HEARING

The Senate Committee on the Judiciary has scheduled a hearing on
"Preserving Prosecutorial

Independence: Is the Department of Justice Politicizing the Hiring and Firing of U.S. Attorneys?"

for Wednesday, February 7, 2007 at 9:30 a.m. in Room 226 of the Dirksen Senate Office Building.

Senator Schumer will chair the hearing.

By order of the Chairman

Elston, Michael (ODAG)

From: Moschella, William
Sent: Thursday, January 25, 2007 7:05 PM
To: Elston, Michael (ODAG)
Cc: Hertling, Richard; Sampson, Kyle
Subject: RE: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

Are you serious? I was going to be in El Paso on Wednesday.

-----Original Message-----

From: Sampson, Kyle
Sent: Thursday, January 25, 2007 6:41 PM
To: Elston, Michael (ODAG); Moschella, William
Cc: Hertling, Richard
Subject: RE: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

Looping in Richard.

-----Original Message-----

From: Elston, Michael (ODAG)
Sent: Thursday, January 25, 2007 6:40 PM
To: Sampson, Kyle; Moschella, William
Subject: Re: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

DAG and I discussed it earlier today, and his choice is ... Moschella.

-----Original Message-----

From: Sampson, Kyle
To: Moschella, William
CC: Elston, Michael (ODAG)
Sent: Thu Jan 25 17:53:25 2007
Subject: RE: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

hah. let me know what he says.

From: Moschella, William
Sent: Thursday, January 25, 2007 5:45 PM
To: Sampson, Kyle
Cc: Elston, Michael (ODAG)
Subject: RE: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

are you crazy? no way, you ask him! . . .

Elston, Michael (ODAG)

From: Goodling, Monica
Sent: Thursday, January 25, 2007 8:07 PM
To: Sampson, Kyle; Elston, Michael (ODAG); Moschella, William; Battle, Michael (USAEO); Nowacki, John (USAEO); Scolinos, Tasia; Roehrkas, Brian
Subject: FW: My Contact Information
Attachments: MCKAY -1-25-07.wpd

Apparently, McKay put this out today. FYI.

From: McKay, John (USAWAW) [mailto:John.McKay@usdoj.gov]
Sent: Thursday, January 25, 2007 8:05 PM
To: USAEO-USAttorneysOnly
Subject: My Contact Information

Colleagues,

My contact information and office press release is below. All the best.

- JOHN McKAY

Seattle University School of Law
901 - 12th Avenue
P. O. Box 222000
Seattle, WA 98122-1090

"UNITED STATES ATTORNEY JOHN McKAY JOINS SEATTLE UNIVERSITY LAW SCHOOL"

<<MCKAY -1-25-07.wpd>>

U.S. Department of Justice

United States Attorney
Western District of Washington

700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271

Tel: (206) 553-7970
Fax: (206) 553-0882

FOR IMMEDIATE RELEASE

January 25, 2007

**UNITED STATES ATTORNEY JOHN MCKAY JOINS SEATTLE UNIVERSITY LAW
SCHOOL**

U.S. Attorney Credited with Innovative Leadership of Federal and Local Law Enforcement

United States Attorney John McKay completes his term tomorrow and will join Seattle University Law School as Visiting Professor of Law. After more than five years as the top federal law enforcement official in Western Washington, McKay is looking forward to working with law students and encouraging them to explore opportunities for public service.

McKay's five year tenure as United States Attorney has been marked by a number of key initiatives designed to enhance law enforcement efforts in the Western District of Washington. McKay reorganized the office to address priorities such as terrorism, organized crime, identity theft and methamphetamine abuse. McKay initiated and lead efforts to establish Northwest LInX, (Law Enforcement Information Exchange) a critical computer network that allows state, local and federal law enforcement agencies to share information. The LInX system now connects 138 law enforcement agencies and has been instrumental in solving countless crimes.

"John McKay has provided exceptional leadership and direction to the federal law enforcement community and specifically to ICE," said Leigh Winchell, Special Agent in Charge of U.S. Immigration and Customs Enforcement (ICE). "We are grateful for his support and commend his integrity and dedication to public service. He will be missed."

"One of John's greatest contributions to law enforcement has been his dedication to the idea of information sharing among agencies," said Laura Laughlin, Special Agent in Charge of the FBI. "He has been instrumental in encouraging federal, state and local law enforcement to find common ground and work together. The FBI has benefited greatly from his leadership and support."

"I appreciate John McKay's ability to deal with and support the issues of local law enforcement, more than any U.S. Attorney I have worked with in the last 19 years, said Everett Police Chief Jim Scharf. "John worked hard to make the relationships with local law enforcement work because he understood the importance of local law enforcement. He will be greatly missed, and very hard to replace."

"All of us in the criminal justice community are sorry to be losing US Attorney John McKay. He has been a strong advocate for crime victims and public safety in our communities. He has maintained his focus on the importance of accountability with those responsible for criminal activity and he has maintained a strong and positive relationship with local, state and federal law enforcement," said Port Orchard Police Chief Alan Townsend.

United States Attorney McKay spearheaded efforts to reach out to minority communities concerned about racial and ethnic profiling following the September 11th attacks. McKay organized meetings between law enforcement leaders and leaders in the Arab-American and Muslim communities to promote better understanding and cooperation.

Seattle Police Chief Gil Kerlikowske lauded McKay's concern for civil rights saying, "The co-operation and support that United States Attorney John McKay has shown to local law enforcement and the Seattle Police Department has resulted not only in a safer community, but one in which people should feel that their civil rights are protected."

"John McKay is and always has been the utmost professional in the performance of his duties as the U.S. Attorney in Western Washington. Above and beyond that, he has continually tried to do the right thing for the sake of justice. He will be missed as a law enforcement leader here in Washington," said Special Agent in Charge Kelvin N. Crenshaw, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

Under McKay's leadership the United States Attorney's Office has significantly improved productivity, despite declining budgets. Preliminary statistics indicated that in 2006, the U.S. Attorney's Office charged nearly twice as many defendants as it did in 2001. The prosecutions are the second highest in the history of the office, despite declining manpower. The office has established itself as a national leader in prosecuting computer crimes, identity theft and multi-national criminal drug organizations. McKay has worked to build bridges between Canadian and U.S. law enforcement to combat cross border crime, and has enhanced federal law enforcement resources in the fast growing counties of Southwest Washington.

"The Drug Enforcement Administration knows John McKay to be a superb leader who for the past five years has led an outstanding group of Federal prosecutors in targeting some of the nations most prolific drug trafficking organizations," said DEA Special Agent in Charge Rodney Benson. "John recognized that drug traffickers are using any and all means, including the use of the latest technology, to circumvent law enforcement efforts to disrupt and dismantle their organizations. Through his outstanding efforts, the United States Attorney's Office in the Western District of Washington adapted to this evolving threat with aggressive wiretap prosecutions against the largest traffickers operating in and around the Pacific Northwest. John is a true friend to law enforcement and, more importantly, a dedicated individual who succeeded in making the communities we live in safer."

"John McKay did an outstanding job in helping to increase federal law enforcement presence in southwest Washington during the time he was U.S. Attorney for the Western District," said Clark County Prosecutor Art Curtis. "We are greatly indebted to him, and he will be missed."

Prior to his appointment, McKay served as President of Legal Services Corporation (LSC) in Washington D.C. Congress established LSC in 1974 as a private non-profit corporation to ensure justice under the law for all low income Americans. From 1989 to 1990 McKay served as a White House Fellow, where he worked as Special Assistant to the Director of the FBI. Following his graduation from Creighton Law School in Nebraska, McKay was a litigation partner at Lane Powell Spears Lubersky in Seattle, and later was a managing partner at the Seattle law firm of Cairncross &

Hempelmann.

United States Attorney General Alberto Gonzalez has the authority to appoint an interim United States Attorney whose term lasts until a new United States Attorney is nominated by President Bush and confirmed by the U.S. Senate.

For additional information please contact Emily Langlie, Public Affairs Officer for the United States Attorney's Office, at (206) 553-4110

Elston, Michael (ODAG)

From: Sampson, Kyle
Sent: Monday, January 29, 2007 6:29 PM
To: Battle, Michael (USAEO); Nowacki, John (USAEO)
Cc: Hertling, Richard; Scott-Finan, Nancy; Goodling, Monica; Elston, Michael (ODAG)
Subject: RE: Independence of US Attorneys - testimony

Importance: High

Attachments: draft DAG testimony – USAs hearing.doc



draft DAG
testimony – USAs he.

Mike/John, here's my draft outline for DAG testimony at next week's hearing.
Thanks for working on this. Look forward to seeing your draft. Thx.

-----Original Message-----

From: Hertling, Richard
Sent: Monday, January 29, 2007 6:21 PM
To: Sampson, Kyle; Scott-Finan, Nancy; Goodling, Monica
Subject: RE: Independence of US Attorneys - testimony

Oral statement will be 5 minutes, though the DAG could go longer. The written can be a longer still if necessary to cover the subject.

-----Original Message-----

From: Sampson, Kyle
Sent: Monday, January 29, 2007 6:18 PM
To: Scott-Finan, Nancy; Goodling, Monica
Cc: Hertling, Richard
Subject: RE: Independence of US Attorneys - testimony

Working on it.

You tell me: how long would the subcommittee want his statement to be? 10 minutes? 5?

-----Original Message-----

From: Scott-Finan, Nancy
Sent: Monday, January 29, 2007 6:12 PM
To: Sampson, Kyle; Goodling, Monica
Cc: Hertling, Richard
Subject: FW: Independence of US Attorneys - testimony

Kyle,

Do you have an outline already available? And, how long would you like the statement to be? Thanks.

Nancy

-----Original Message-----

From: Hertling, Richard
Sent: Monday, January 29, 2007 5:51 PM
To: Scott-Finan, Nancy; Seidel, Rebecca; Bounds, Ryan W (OLP)
Cc: Nowacki, John (USAEO)
Subject: RE: Independence of US Attorneys - testimony

EOUSA will take the initial stab at testimony following receipt of an outline from Kyle Sampson.

-----Original Message-----

From: Scott-Finan, Nancy
Sent: Monday, January 29, 2007 5:51 PM
To: Hertling, Richard; Seidel, Rebecca; Bounds, Ryan W (OLP)
Cc: Nowacki, John (USAEO)
Subject: RE: Independence of US Attorneys - testimony.

Ryan, have you had a chance to check with Rachel?

Thanks.

Nancy

-----Original Message-----

From: Hertling, Richard
Sent: Monday, January 29, 2007 12:01 PM
To: Seidel, Rebecca; Bounds, Ryan W (OLP); Scott-Finan, Nancy
Cc: Nowacki, John (USAEO)
Subject: RE: Independence of US Attorneys - testimony

Whoever drafts it, the testimony needs to include a sentence stating that DOJ is currently reviewing the issue of whether the appointment of an interim US Attorney by the judicial branch is constitutional.

-----Original Message-----

From: Seidel, Rebecca
Sent: Monday, January 29, 2007 11:58 AM
To: Bounds, Ryan W (OLP); Scott-Finan, Nancy
Cc: Hertling, Richard; Nowacki, John (USAEO)
Subject: RE: Independence of US Attorneys - testimony
Importance: High

We have to figure out asap because the testimony needs to go into DOJ clearance TOMORROW (because we have to get to committee 48 hours in advance, so needs to get to Committee Monday, so OMB needs it Wed).

-----Original Message-----

From: Bounds, Ryan W (OLP)
Sent: Monday, January 29, 2007 11:56 AM
To: Seidel, Rebecca; Scott-Finan, Nancy
Cc: Hertling, Richard
Subject: RE: Independence of US Attorneys

I'll raise it with Rachel. She wanted to ensure that the person who is working on the views letter went back to the crime initiative ASAP, and there's no reason for OLP rather than EOUSA to work on drafting testimony if we're reassigning it to someone new anyway.

-----Original Message-----

From: Seidel, Rebecca
Sent: Monday, January 29, 2007 11:38 AM
To: Bounds, Ryan W (OLP); Scott-Finan, Nancy
Cc: Hertling, Richard
Subject: RE: Independence of US Attorneys

Richard thought OLP was doing both the views letter and the testimony, makes sense one can morph into the other.

-----Original Message-----

From: Bounds, Ryan W (OLP)
Sent: Monday, January 29, 2007 11:34 AM
To: Scott-Finan, Nancy
Cc: Seidel, Rebecca
Subject: Re: Independence of US Attorneys

I don't recall anything about any testimony, and OLP probably should not draft it anyway. (RAH was of the view that this was a good project for EOUSA.) We'll be circulating a draft views letter today.

RWB

-----Original Message-----

From: Scott-Finan, Nancy

To: Bounds, Ryan W (OLP)

CC: Seidel, Rebecca

Sent: Mon Jan 29 11:29:56 2007

Subject: Independence of US Attorneys

Ryan,

How are we doing on the views letter and the testimony. It is my understanding that OLP is drafting both and that the DAG will be testifying. Under the Committee rules, since the hearing was noticed two weeks out, our testimony is due on the Hill a week from today. Thanks much.

Nancy

Draft Testimony for
Deputy Attorney General
Paul McNulty

Hearing before the Subcommittee on the Courts
Committee on the Judiciary
U.S. Senate

Wednesday, February 7, 2007

OUTLINE

I. The role of the U.S. Attorney

- Chief federal law enforcement officer in the district
- Law enforcement/Prosecutor
- Manager/executor of Administration's priorities

II. U.S. Attorney appointments

- History of U.S. Attorney appointments
 - Generally
 - In Bush Administration
- Administration is committed to having Senate-confirmed U.S. Attorney in every district
 - Evidence of this
 - Examples
- U.S. Attorneys serve at pleasure of the President
 - May be removed for any reason or no reasons
 - Appropriate reasons to remove (or ask or encourage to resign): malfeasance, management issues, etc.
 - Inappropriate reasons to remove (or ask or encourage to resign): to influence investigation or prosecution

III. The Feinstein bill/interim U.S. Attorney appointments

- Amendment to § 546 was necessary and appropriate
 - Constitutional concerns
 - Practical/policy concerns
- Administration's standard practice in making interim U.S. Attorney appointments
 - DOJ employee
 - Preferably someone from within the office (though exceptions where warranted)

Department Of Justice
Office Legislative Affairs
Control Sheet

Date Of Document: 01/30/07
Date Received: 01/30/07
Due Date: 01/31/07 3 pm

Control No.: 070131-13228
ID No.: 435231

From: ODAG (SENATE JUDICIARY COMTE) (S.214) ((110TH
CONGRESS))

To: SENATE JUDICIARY COMTE

Subject:

ATTACHED FOR YOUR REVIEW AND COMMENT IS A COPY OF THE DRAFT STATEMENT OF
PAUL MCNULTY, DEPUTY ATTORNEY GENERAL, REGARDING PRESERVING
PROSECUTORIAL INDEPENDENCE: IS THE DEPARTMENT OF JUSTICE POLITICIZING
THE HIRING AND FIRING OF U.S. ATTORNEYS?, BEFORE THE SENATE JUDICIARY
COMTE, TO BE GIVEN ON FEBRUARY 6, 2007

Action/Information:

Signature Level: OLA

Referred To:

Assigned: Action:

EOUSA, FBI, ATF, USMS,
DEA, CIV, ASG, CRM

01/31/07 COMMENTS DUE TO OLA/BLACKWOOD BY 3 PM
01/31/07. CC: OAG, ODAG, OLP,
OLA/SCOTT-FINAN/SEIDEL

Remarks:

Comments:

File Comments:

Primary Contact: KRISTINE BLACKWOOD, 514-2113

DAG000000608

DRAFT

DRAFT

DRAFT

DRAFT TESTIMONY FOR
DEPUTY ATTORNEY GENERAL PAUL MCNULTY

Hearing before the Subcommittee on the Courts
Committee on the Judiciary
U.S. Senate

Wednesday, February 7, 2007

Chairman Schumer, Senator Sessions, and members of the Subcommittee, thank you for the invitation to discuss the importance and the independence of the Justice Department's United States Attorneys. As a former United States Attorney, I particularly appreciate this opportunity to address the critical role U.S. Attorneys play in enforcing our Nation's laws and carrying out the priorities of the Department of Justice.

I have often said that being a United States Attorney is one of the greatest jobs you can ever have. It is a privilege and a challenge—one that carries a great responsibility. As former Attorney General Griffin Bell and Daniel Meador wrote, U.S. Attorneys are "the front-line troops charged with carrying out the Executive's constitutional mandate to execute faithfully the laws in every federal judicial district." As the chief federal law-enforcement officers in their districts, U.S. Attorneys represent the Attorney General before Americans who may not otherwise have contact with the Department of Justice. They lead our efforts to protect America from terrorist attacks and fight violent crime, combat illegal drug trafficking, ensure the integrity of government and the marketplace, enforce our immigration laws, and prosecute crimes that endanger children and families—including child pornography, obscenity, and human trafficking.

DAG000000609

U.S. Attorneys are not only prosecutors; they are government officials charged with managing and implementing the policies and priorities of the Executive Branch. The Department of Justice—including the office of United States Attorney—was created precisely so that the government's legal business could be effectively managed and carried out through a coherent program under the supervision of the Attorney General. And unlike judges, who are supposed to act independently of those who nominate them, U.S. Attorneys are accountable to the Attorney General, and through him, to the President—the head of the Executive Branch. For these reasons, the Department is committed to having the best person discharging the responsibilities of that office at all times and in every district.

When a U.S. Attorney submits his or her resignation, the Administration has an obligation to ensure that someone is able to carry out the important function of leading a U.S. Attorney's Office during the period when there is not a Presidentially-nominated, Senate-confirmed United States Attorney. In some cases, the First Assistant U.S. Attorney is the appropriate person to serve in that capacity, but there are reasons he or she may not be, including: an impending retirement; an indication that the First Assistant has no desire to serve as an Acting U.S. Attorney, an IG or OPR matter in his or her file, which may make elevation inappropriate; an unfavorable recommendation by the outgoing U.S. Attorney; or that the individual does not enjoy the confidence of those responsible for ensuring ongoing operations and an appropriate transition. In those

situations, the Attorney General has appointed another individual to lead the office during the transition.

In every single case where a vacancy occurs, it is the goal of the Bush Administration to have a United States Attorney that is confirmed by the Senate. Every single time that a vacancy has arisen, the President has either made a nomination, or the Administration is working—in consultation with home-state Senators—to select candidates for nomination. Let me be perfectly clear—at no time has the Administration sought to avoid the Senate confirmation process by appointing an interim United States Attorney and then refused to move forward in consultation with home-state Senators on the selection, nomination, and confirmation of a new U.S. Attorney. Consultation and confirmation is the method preferred by the Senate, and that is the method preferred by the Administration.

Since January 20, 2001, 125 new U.S. Attorneys have been nominated by the President and confirmed by the Senate. On March 9, 2006, the Congress amended the Attorney General's authority to appoint interim U.S. Attorneys, and 13 vacancies have occurred since that date. This amendment has not changed our commitment to nominating candidates for Senate confirmation. In fact, the Administration has nominated a total of 15 individuals for Senate consideration since the appointment authority was amended, with 12 of those nominees having been confirmed to date. Of the 13 vacancies that have occurred since the time that the law was amended, the Administration has nominated candidates to fill five of these positions, has interviewed

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candidates for seven positions, and is waiting to receive names to set up interviews for one position—all in consultation with home-state Senators.

However, while that process continues, the Department must continue to manage the important prosecutions and work of these offices. In order to ensure an effective and smooth transition during those vacancies, the office of the U.S. Attorney was filled on an interim basis using a range of authorities.

In four cases, the First Assistant was selected to lead the office and took over under the provisions of the Vacancy Reform Act, at 5 U.S.C. § 3345(a)(1). That authority is limited to 210 days, unless a nomination is made during that period. In a fifth case, the First Assistant was selected under that provision of the Vacancy Reform Act but took federal retirement a month later. The Department then selected another Department employee to serve as an interim U.S. Attorney under an Attorney General appointment until a nomination is submitted to the Senate.

In one case, the First Assistant resigned at the same time as the U.S. Attorney, creating a need for an interim until such time as a nomination is submitted to the Senate.

In the eight remaining cases, the Department selected another Department employee to serve as interim U.S. Attorney under an Attorney General appointment until such time as a nomination is submitted to the Senate.

DAG000000612

United States Attorneys serve at the pleasure of the President. Like any other high-ranking officials in the Executive Branch, they may be removed for any reason or no reason. The Attorney General and I are responsible for evaluating the performance of the United States Attorneys and ensuring that they are leading their offices effectively. It should come as no surprise to anyone that, in an organization as large as the Justice Department, U.S. Attorneys may be removed, or asked or encouraged to resign. However, U.S. Attorneys are never removed, or asked or encouraged to resign, in an effort to retaliate against them or interfere with or inappropriately influence a particular investigation, criminal prosecution, or civil case. Any suggestion to the contrary is simply irresponsible.

With 93 U.S. Attorneys across the country, the Department often averages between eight to 15 vacancies at any given time. Given this occasional turnover, career investigators and prosecutors exercise direct responsibility for nearly all investigations and cases handled by a U.S. Attorney's Office. The effect of a U.S. Attorney's departure on an ongoing investigation would be minimal.

Given these facts, the Department of Justice strongly opposes S. 214, which would radically change the way in which U.S. Attorney vacancies are temporarily filled, taking the authority to appoint members of his own staff from the Attorney General and delegating it instead to another branch of government.

As you know, prior to last year's amendment of 28 U.S.C. § 546, the Attorney General could appoint an interim U.S. Attorney for only 120 days; thereafter, the district court was authorized to appoint an interim U.S. Attorney. In cases where a Senate-confirmed U.S. Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in several recurring problems. Some district courts recognized the conflicts inherent in the appointment of an interim U.S. Attorney who would then have matters before the court—not to mention the oddity of one branch of government appointing officers of another—and simply refused to exercise the appointment authority. In those cases, the Attorney General was then required to make multiple 120-day interim appointments. Other district courts ignored the inherent conflicts and the oddity, and sought to appoint as interim U.S. Attorneys unacceptable candidates without the required clearances or appropriate qualifications. Last year's amendment of section 546, which brought the section largely into conformity with the Vacancies Reform Act, was necessary and entirely appropriate.

S. 214, on the other hand, would not only fail to ensure that those problems did not recur; it would exacerbate them by making appointment by the district court the only means of temporarily filling a vacancy—a step inconsistent with sound separation-of-powers principles. We are aware of no other agency where federal judges—members of a separate branch of government and not the head of the agency—appoint interim staff on behalf of the agency. Such a judicial appointee would have authority for litigating the entire federal criminal and civil docket before the very district court to whom he or she was beholden for the appointment. This arrangement, at a minimum, gives rise to an

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appearance of potential conflict that undermines the performance of both the Executive and Judicial Branches. Furthermore, prosecutorial authority should be exercised by the Executive Branch in a unified manner, consistent with the application of criminal enforcement policy under the Attorney General. S. 214 would undermine the effort to achieve a unified and consistent approach to prosecutions and federal law enforcement.

S. 214 seems aimed at solving a problem that does not exist. When a vacancy in the office of U.S. Attorney occurs, the Department often looks first to the First Assistant or another senior manager in the office to serve as an Acting or interim U.S. Attorney. Where neither the First Assistant nor another senior manager is able or willing to serve as an Acting or interim U.S. Attorney, or where their service would not be appropriate under the circumstances, the Administration may look to other Department employees to serve temporarily. No matter which way a U.S. Attorney is temporarily appointed, the Administration consistently seeks to consult with home-state Senators and fill the vacancy with a Presidentially-nominated and Senate-confirmed nominee.

Thank you again for the opportunity to testify, and I look forward to answering the Subcommittee's questions.

DAG000000615

Elston, Michael (ODAG)

From: Seidel, Rebecca
Sent: Tuesday, January 30, 2007 7:34 PM
To: Sampson, Kyle; Moschella, William; Elston, Michael (ODAG); Brand, Rachel; Bounds, Ryan W (OLP); Goodling, Monica
Cc: Scott-Finan, Nancy; Nowacki, John (USAEO); Clifton, Deborah J; Blackwood, Kristine; Hertling, Richard
Subject: FW: SJC U.S. Attorneys hearing Draft testimony
Importance: High
Attachments: DRAFT Testimony – US Attorneys Hearing.doc

Thank you John. Debbie and Kristine are gone for the evening, but will circulate within DOJ first thing in the morning. OAG, ODAG and OLP - wanted to get to you directly so you don't have to wait till morning circulation. Debbie, we need OMB clearance by Friday COB, so that means we have to get to OMB Wed COB at latest.

note the hearing is now Tuesday the 6th instead of Wed the 7th.

From: Nowacki, John (USAEO) [mailto:John.Nowacki@usdoj.gov]
Sent: Tuesday, January 30, 2007 7:30 PM
To: Seidel, Rebecca; Scott-Finan, Nancy
Subject: SJC U.S. Attorneys hearing

The draft testimony for the DAG is attached.

<<DRAFT Testimony – US Attorneys Hearing.doc>>

DAG000000616

3/12/2007

DRAFT TESTIMONY FOR
DEPUTY ATTORNEY GENERAL PAUL MCNULTY

Hearing before the Subcommittee on the Courts
Committee on the Judiciary
U.S. Senate

Wednesday, February 7, 2007

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DAG000000621

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DAG000000623

Elston, Michael (ODAG)

From: Sampson, Kyle
Sent: Wednesday, January 31, 2007 10:04 AM
To: Blackwood, Kristine; Seidel, Rebecca
Cc: Scott-Finan, Nancy; Clifton, Deborah J; Elston, Michael (ODAG)
Subject: RE: SJC U.S. Attorneys hearing Draft testimony

I physically gave them to Elston -- he has possession now.

-----Original Message-----

From: Blackwood, Kristine
Sent: Wednesday, January 31, 2007 9:58 AM
To: Sampson, Kyle; Seidel, Rebecca
Cc: Scott-Finan, Nancy; Clifton, Deborah J; Elston, Michael (ODAG)
Subject: RE: SJC U.S. Attorneys hearing Draft testimony

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Cc: Scott-Finan, Nancy; Clifton, Deborah J; Elston, Michael (ODAG)
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From: Blackwood, Kristine
To: Seidel, Rebecca; Sampson, Kyle
CC: Scott-Finan, Nancy; Clifton, Deborah J
Sent: Wed Jan 31 08:51:12 2007
Subject: Re: SJC U.S. Attorneys hearing Draft testimony

Yes. Debbie - this should go to EOUSA, FBI, ATF, USMS, DEA, CIV, ASG, CRM, due back 3pm. .

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From: Seidel, Rebecca
To: Sampson, Kyle
CC: Blackwood, Kristine; Scott-Finan, Nancy
Sent: Tue Jan 30 19:35:46 2007
Subject: RE: SJC U.S. Attorneys hearing Draft testimony

send comments back to Kristine. If we are going to get to OMB by COB tomorrow, I would think 3pm is the latest for comments to give Kristine time to assimilate and deconflict. right Kristine?

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Cc: Scott-Finan, Nancy; Nowacki, John (USAEO); Clifton, Deborah J; Blackwood, Kristine; Hertling, Richard

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Importance: High

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Sent: Tuesday, January 30, 2007 7:30 PM

To: Seidel, Rebecca; Scott-Finan, Nancy

Subject: SJC U.S. Attorneys hearing

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<<DRAFT Testimony -- US Attorneys Hearing.doc>>

Elston, Michael (ODAG)

From: Elston, Michael (ODAG)
Sent: Wednesday, January 31, 2007 10:22 AM
To: Blackwood, Kristine; Sampson, Kyle; Seidel, Rebecca
Cc: Scott-Finan, Nancy; Clifton, Deborah J
Subject: Re: SJC U.S. Attorneys hearing Draft testimony

At what point will you be turning the pen over to ODAG?

-----Original Message-----

From: Blackwood, Kristine
To: Sampson, Kyle; Seidel, Rebecca
CC: Scott-Finan, Nancy; Clifton, Deborah J; Elston, Michael (ODAG)
Sent: Wed Jan 31 10:16:47 2007
Subject: RE: SJC U.S. Attorneys hearing Draft testimony

I'm working on the OLP edits and planning to circulate an updated version that folks can redline. I'd rather not confuse them with too many versions, so would like to get whatever anyone has.

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From: Elston, Michael (ODAG)
Sent: Wednesday, January 31, 2007 10:26 AM
To: Blackwood, Kristine; Sampson, Kyle; Seidel, Rebecca
Cc: Scott-Finan, Nancy; Clifton, Deborah J
Subject: Re: SJC U.S. Attorneys hearing Draft testimony

This is due at 5, right?

-----Original Message-----

From: Blackwood, Kristine
To: Elston, Michael (ODAG); Sampson, Kyle; Seidel, Rebecca
CC: Scott-Finan, Nancy; Clifton, Deborah J
Sent: Wed Jan 31 10:23:58 2007
Subject: RE: SJC U.S. Attorneys hearing Draft testimony

I was hoping to get all comments by 3pm, and to send you a redline that would be easy to read. I've got the OLP edits in now, but thought it would be easier for people if I send that version out on top of Debbie's email, and ask them to use that version as an updated one instead of the one Debbie just sent.

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Subject: RE: SJC U.S. Attorneys hearing Draft testimony

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Strike that. You have already set the deadline. Just be prepared for substantial ODAG revisions around 4:30.

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From: Elston, Michael (ODAG)
To: Blackwood, Kristine; Sampson, Kyle; Seidel, Rebecca
CC: Scott-Finan, Nancy; Clifton, Deborah J
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See below that I sent to Kristine. Want me to rescind?

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From: Seidel, Rebecca
To: Blackwood, Kristine
CC: Scott-Finan, Nancy; Clifton, Deborah J
Sent: Wed Jan 31 10:36:52 2007
Subject: Re: SJC U.S. Attorneys hearing Draft testimony

Much appreciated. But from this point forward, just send them what you have and send them component comments as you get them. We ordinarily would send to Witness right?

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To: Clifton, Deborah J; Seidel, Rebecca
CC: Scott-Finan, Nancy
Sent: Wed Jan 31 10:32:58 2007
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So they can PICK AND CHOOSE which edits they want to accept. Would you rather I make THEM create a redline? Or send them multiple conflicting comments on a piece meal basis? I am trying to spare them some work.

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To: Blackwood, Kristine; Seidel, Rebecca
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Then why are you doing a redline?

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Kristine,

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You mean Kyle's changes, right?

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Mike - I'm making your changes now. I'll send it back to you so you can see it.

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Subject: SJC U.S. Attorneys hearing

The draft testimony for the DAG is attached.

<<DRAFT Testimony -- US Attorneys Hearing.doc>>

Elston, Michael (ODAG)

From: Seidel, Rebecca
Sent: Wednesday, January 31, 2007 11:03 AM
To: Elston, Michael (ODAG)
Subject: Re: SJC U.S. Attorneys hearing Draft testimony

I think she will be sending to you soon and let you make edits from here.

-----Original Message-----

From: Elston, Michael (ODAG)
To: Seidel, Rebecca
Sent: Wed Jan 31 11:00:40 2007
Subject: Re: SJC U.S. Attorneys hearing Draft testimony

I just want to have time to make changes and review with Paul. I don't care about the mechanics.

It seems to me that the easiest way to do it is for me to have the actual document at some point and make (or not make) suggested changes, make all of Paul's changes and then return it to you.

-----Original Message-----

From: Seidel, Rebecca
To: Elston, Michael (ODAG)
Sent: Wed Jan 31 10:39:31 2007
Subject: Fw: SJC U.S. Attorneys hearing Draft testimony

See below that I sent to Kristine. Want me to rescind?

-----Original Message-----

From: Seidel, Rebecca
To: Blackwood, Kristine
CC: Scott-Finan, Nancy; Clifton, Deborah J
Sent: Wed Jan 31 10:36:52 2007
Subject: Re: SJC U.S. Attorneys hearing Draft testimony

Much appreciated. But from this point forward, just send them what you have and send them component comments as you get them. We ordinarily would send to Witness right?

-----Original Message-----

From: Blackwood, Kristine
To: Clifton, Deborah J; Seidel, Rebecca
CC: Scott-Finan, Nancy
Sent: Wed Jan 31 10:32:58 2007
Subject: RE: SJC U.S. Attorneys hearing Draft testimony

So they can PICK AND CHOOSE which edits they want to accept. Would you rather I make THEM create a redline? Or send them multiple conflicting comments on a piece meal basis? I am trying to spare them some work.

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From: Clifton, Deborah J
Sent: Wednesday, January 31, 2007 10:32 AM
To: Blackwood, Kristine; Seidel, Rebecca
Cc: Scott-Finan, Nancy
Subject: RE: SJC U.S. Attorneys hearing Draft testimony

Then why are you doing a redline?

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To: Clifton, Deborah J; Seidel, Rebecca
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Subject: RE: SJC U.S. Attorneys hearing Draft testimony

I'm not making edits. They will make the edits.

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Sent: Wednesday, January 31, 2007 10:30 AM
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Kristine,

ODAG should have the pen. You should be forwarding all comments to ODAG so that they can determine which ones they want to accept and which ones that don't want to accept. You should not be making the edits.

Debbie

-----Original Message-----

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Mike - in case you want to start playing with this, it is attached, with title page, page #s, Kyle's edits, etc. Kyle wanted to insert a paragraph from a letter to Sen Pryor, but OLA doesn't have the letter, so that part is just noted in brackets. If you don't want to work on this now and want to wait, that's fine, too. Hopefully in the meantime we can get our hands on the Pryor letter and I'll insert that part and send it on to you. (My goal is to get you something as close to final as possible as soon as possible, so we can get it off to OMB asap once you're done with it.)

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Sent: Tuesday, January 30, 2007 7:34 PM
To: Sampson, Kyle; Moschella, William; Elston, Michael (ODAG); Brand, Rachel; Bounds, Ryan

W (OLP); Goodling, Monica

Cc: Scott-Finan, Nancy; Nowacki, John (USAEO); Clifton, Deborah J; Blackwood, Kristine; Hertling, Richard

Subject: FW: SJC U.S. Attorneys hearing Draft testimony

Importance: High

Thank you John. Debbie and Kristine are gone for the evening, but will circulate within DOJ first thing in the morning. OAG, ODAG and OLP - wanted to get to you directly so you don't have to wait till morning circulation. Debbie, we need OMB clearance by Friday COB, so that means we have to get to OMB Wed COB at latest.

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Sent: Tuesday, January 30, 2007 7:30 PM

To: Seidel, Rebecca; Scott-Finan, Nancy

Subject: SJC U.S. Attorneys hearing

The draft testimony for the DAG is attached.

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It seems to me that the easiest way to do it is for me to have the actual document at some point and make (or not make) suggested changes, make all of Paul's changes and then return it to you.

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To: Blackwood, Kristine
CC: Scott-Finan, Nancy; Clifton, Deborah J
Sent: Wed Jan 31 10:36:52 2007
Subject: Re: SJC U.S. Attorneys hearing Draft testimony

Much appreciated. But from this point forward, just send them what you have and send them component comments as you get them. We ordinarily would send to Witness right?

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From: Blackwood, Kristine
To: Clifton, Deborah J; Seidel, Rebecca
CC: Scott-Finan, Nancy
Sent: Wed Jan 31 10:32:58 2007
Subject: RE: SJC U.S. Attorneys hearing Draft testimony

So they can PICK AND CHOOSE which edits they want to accept. Would you rather I make THEM create a redline? Or send them multiple conflicting comments on a piece meal basis? I am trying to spare them some work.

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From: Clifton, Deborah J
Sent: Wednesday, January 31, 2007 10:32 AM
To: Blackwood, Kristine; Seidel, Rebecca

Cc: Scott-Finan, Nancy
Subject: RE: SJC U.S. Attorneys hearing Draft testimony

Then why are you doing a redline?

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Cc: Scott-Finan, Nancy
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To: Blackwood, Kristine; Seidel, Rebecca
Cc: Scott-Finan, Nancy
Subject: RE: SJC U.S. Attorneys hearing Draft testimony

Kristine,

ODAG should have the pen. You should be forwarding all comments to ODAG so that they can determine which ones they want to accept and which ones that don't want to accept. You should not be making the edits.

Debbie

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From: Seidel, Rebecca
To: Blackwood, Kristine
CC: Scott-Finan, Nancy; Clifton, Deborah J
Sent: Wed Jan 31 10:36:52 2007
Subject: Re: SJC U.S. Attorneys hearing Draft testimony

Much appreciated. But from this point forward, just send them what you have and send them component comments as you get them. We ordinarily would send to Witness right?

-----Original Message-----

From: Blackwood, Kristine
To: Clifton, Deborah J; Seidel, Rebecca
CC: Scott-Finan, Nancy
Sent: Wed Jan 31 10:32:58 2007
Subject: RE: SJC U.S. Attorneys hearing Draft testimony

So they can PICK AND CHOOSE which edits they want to accept. Would you rather I make THEM create a redline? Or send them multiple conflicting comments on a piece meal basis? I am trying to spare them some work.

-----Original Message-----

From: Clifton, Deborah J
Sent: Wednesday, January 31, 2007 10:32 AM
To: Blackwood, Kristine; Seidel, Rebecca
Cc: Scott-Finan, Nancy
Subject: RE: SJC U.S. Attorneys hearing Draft testimony

Then why are you doing a redline?

-----Original Message-----

From: Blackwood, Kristine
Sent: Wednesday, January 31, 2007 10:31 AM
To: Clifton, Deborah J; Seidel, Rebecca
Cc: Scott-Finan, Nancy
Subject: RE: SJC U.S. Attorneys hearing Draft testimony

I'm not making edits. They will make the edits.

-----Original Message-----

From: Clifton, Deborah J
Sent: Wednesday, January 31, 2007 10:30 AM
To: Blackwood, Kristine; Seidel, Rebecca
Cc: Scott-Finan, Nancy
Subject: RE: SJC U.S. Attorneys hearing Draft testimony

Kristine,

ODAG should have the pen. You should be forwarding all comments to ODAG so that they can determine which ones they want to accept and which ones that don't want to accept. You should not be making the edits.

Debbie

-----Original Message-----

From: Elston, Michael (ODAG)
Sent: Wednesday, January 31, 2007 10:29 AM
To: Blackwood, Kristine; Sampson, Kyle; Seidel, Rebecca
Cc: Scott-Finan, Nancy; Clifton, Deborah J
Subject: Re: SJC U.S. Attorneys hearing Draft testimony

Not sure that will work. This is not ODAG clearance, this is the DAG's testimony. I would like the pen by noon or shortly thereafter.

-----Original Message-----

From: Blackwood, Kristine
To: Elston, Michael (ODAG); Sampson, Kyle; Seidel, Rebecca
CC: Scott-Finan, Nancy; Clifton, Deborah J
Sent: Wed Jan 31 10:26:41 2007
Subject: RE: SJC U.S. Attorneys hearing Draft testimony

Comments are due at 3pm. Then ODAG gets it with any comments, then we get it to OMB by 5pm.

-----Original Message-----

From: Elston, Michael (ODAG)
Sent: Wednesday, January 31, 2007 10:26 AM
To: Blackwood, Kristine; Sampson, Kyle; Seidel, Rebecca
Cc: Scott-Finan, Nancy; Clifton, Deborah J
Subject: Re: SJC U.S. Attorneys hearing Draft testimony

This is due at 5, right?

-----Original Message-----

From: Blackwood, Kristine
To: Elston, Michael (ODAG); Sampson, Kyle; Seidel, Rebecca
CC: Scott-Finan, Nancy; Clifton, Deborah J
Sent: Wed Jan 31 10:23:58 2007
Subject: RE: SJC U.S. Attorneys hearing Draft testimony

I was hoping to get all comments by 3pm, and to send you a redline that would be easy to read. I've got the OLP edits in now, but thought it would be easier for people if I send that version out on top of Debbie's email, and ask them to use that version as an updated one instead of the one Debbie just sent.

-----Original Message-----

From: Elston, Michael (ODAG)
Sent: Wednesday, January 31, 2007 10:22 AM
To: Blackwood, Kristine; Sampson, Kyle; Seidel, Rebecca
Cc: Scott-Finan, Nancy; Clifton, Deborah J
Subject: Re: SJC U.S. Attorneys hearing Draft testimony

At what point will you be turning the pen over to ODAG?

-----Original Message-----

From: Blackwood, Kristine
To: Sampson, Kyle; Seidel, Rebecca
CC: Scott-Finan, Nancy; Clifton, Deborah J; Elston, Michael (ODAG)
Sent: Wed Jan 31 10:16:47 2007
Subject: RE: SJC U.S. Attorneys hearing Draft testimony

I'm working on the OLP edits and planning to circulate an updated version that folks can redline. I'd rather not confuse them with too many versions, so would like to get whatever anyone has.

-----Original Message-----

From: Sampson, Kyle
Sent: Wednesday, January 31, 2007 10:04 AM
To: Blackwood, Kristine; Seidel, Rebecca
Cc: Scott-Finan, Nancy; Clifton, Deborah J; Elston, Michael (ODAG)
Subject: RE: SJC U.S. Attorneys hearing Draft testimony

I physically gave them to Elston -- he has possession now.

-----Original Message-----

From: Blackwood, Kristine
Sent: Wednesday, January 31, 2007 9:58 AM
To: Sampson, Kyle; Seidel, Rebecca
Cc: Scott-Finan, Nancy; Clifton, Deborah J; Elston, Michael (ODAG)
Subject: RE: SJC U.S. Attorneys hearing Draft testimony

Could we have them please?

-----Original Message-----

From: Sampson, Kyle
Sent: Wednesday, January 31, 2007 9:58 AM
To: Blackwood, Kristine; Seidel, Rebecca
Cc: Scott-Finan, Nancy; Clifton, Deborah J; Elston, Michael (ODAG)
Subject: Re: SJC U.S. Attorneys hearing Draft testimony

I gave my comments to Elston this morning.

-----Original Message-----

From: Blackwood, Kristine
To: Seidel, Rebecca; Sampson, Kyle

CC: Scott-Finan, Nancy; Clifton, Deborah J
Sent: Wed Jan 31 08:51:12 2007
Subject: Re: SJC U.S. Attorneys hearing Draft testimony

Yes. Debbie - this should go to EOUSA, FBI, ATF, USMS, DEA, CIV, ASG, CRM, due back 3pm. .

-----Original Message-----

From: Seidel, Rebecca
To: Sampson, Kyle
CC: Blackwood, Kristine; Scott-Finan, Nancy
Sent: Tue Jan 30 19:35:46 2007
Subject: RE: SJC U.S. Attorneys hearing Draft testimony

send comments back to Kristine. If we are going to get to OMB by COB tomorrow, I would think 3pm is the latest for comments to give Kristine time to assimilate and deconflict. right Kristine?

From: Sampson, Kyle
Sent: Tuesday, January 30, 2007 7:35 PM
To: Seidel, Rebecca
Subject: RE: SJC U.S. Attorneys hearing Draft testimony

comments to who? by when?

From: Seidel, Rebecca
Sent: Tuesday, January 30, 2007 7:34 PM
To: Sampson, Kyle; Moschella, William; Elston, Michael (ODAG); Brand, Rachel; Bounds, Ryan W (OLP); Goodling, Monica
Cc: Scott-Finan, Nancy; Nowacki, John (USAEO); Clifton, Deborah J; Blackwood, Kristine; Hertling, Richard
Subject: FW: SJC U.S. Attorneys hearing Draft testimony
Importance: High

Thank you John. Debbie and Kristine are gone for the evening, but will circulate within DOJ first thing in the morning. OAG, ODAG and OLP - wanted to get to you directly so you don't have to wait till morning circulation. Debbie, we need OMB clearance by Friday COB, so that means we have to get to OMB Wed COB at latest.

note the hearing is now Tuesday the 6th instead of Wed the 7th.

From: Nowacki, John (USAEO) [mailto:John.Nowacki@usdoj.gov]
Sent: Tuesday, January 30, 2007 7:30 PM
To: Seidel, Rebecca; Scott-Finan, Nancy
Subject: SJC U.S. Attorneys hearing

The draft testimony for the DAG is attached.

<<DRAFT Testimony -- US Attorneys Hearing.doc>>

Elston, Michael (ODAG)

From: Chiara, Margaret M. (USAMIW) [MM.Chiara@usdoj.gov]
Sent: Thursday, February 01, 2007 3:41 PM
To: McNulty, Paul J
Cc: Elston, Michael (ODAG)
Subject: WDMI

Paul: February 1 seems to be the right date to provide a status report. I continue to vigorously pursue employment. In addition to applying to numerous public agencies and organizations, I am now working with a "headhunter". Who knew this could be so difficult?

Michael Elston informed me that I must vacate my position by March 1. Therefore, I plan to announce my resignation on the afternoon of February 14 or the morning of February 15. I need all the time, salary and benefits available so my resignation will be effective on February 28. The first question within WDMI will be who is the nominee? When will I be able to answer that question?

FYI: Everyone who knows about my required resignation, (primarily our USA colleagues and people who are providing references), is astonished that I am being asked to leave. Now that it has been widely reported that departing USAs have either failed to meet performance expectations or that they acted independently rather than follow DOJ/EOUSA directives, the situation is so much worse. You know that I am in neither category. This makes me so sad. Why have I been asked to resign? The real reason, especially if true, would be a lot easier to live with. Margaret

Elston, Michael (ODAG)

From: Elston, Michael (ODAG)
Sent: Thursday, February 01, 2007 3:52 PM
To: Hertling, Richard
Cc: Sampson, Kyle; Goodling, Monica; Moschella, William; McNulty, Paul J; Seidel, Rebecca
Subject: Bud Cummins

just called to let me know that Pryor's and Schumer's staff have called and asked him to testify on Tuesday. He declined, but wanted to know if we wanted him to testify -- would tell the truth about his circumstances and would also strongly support our view of S 214.

Thoughts?

Elston, Michael (ODAG)

From: Sampson, Kyle
Sent: Thursday, February 01, 2007 4:15 PM
To: Elston, Michael (ODAG); Hertling, Richard
Cc: Goodling, Monica; Moschella, William; McNulty, Paul J; Seidel, Rebecca
Subject: RE: Bud Cummins

I don't think he should. How would he answer:

Did you resign voluntarily?
Were you told why you were being asked to resign?
Who told you?
When did they tell you?
What did they say?
Did you ever talk to Tim Griffin about his becoming U.S. Attorney?
What did Griffin say?
Did Griffin ever talk about being AG appointed and avoiding Senate confirmation?
Were you asked to resign because you were underperforming?
If not, then why?
Etc., etc.

-----Original Message-----

From: Elston, Michael (ODAG)
Sent: Thursday, February 01, 2007 3:52 PM
To: Hertling, Richard
Cc: Sampson, Kyle; Goodling, Monica; Moschella, William; McNulty, Paul J; Seidel, Rebecca
Subject: Bud Cummins

just called to let me know that Pryor's and Schumer's staff have called and asked him to testify on Tuesday. He declined, but wanted to know if we wanted him to testify -- would tell the truth about his circumstances and would also strongly support our view of S 214.

Thoughts?

Elston, Michael (ODAG)

From: Elston, Michael (ODAG)
Sent: Thursday, February 01, 2007 4:35 PM
To: Sampson, Kyle; Hertling, Richard
Cc: Goodling, Monica; Moschella, William; McNulty, Paul J; Seidel, Rebecca
Subject: Re: Bud Cummins

Agreed.

-----Original Message-----

From: Sampson, Kyle
To: Elston, Michael (ODAG); Hertling, Richard
CC: Goodling, Monica; Moschella, William; McNulty, Paul J; Seidel, Rebecca
Sent: Thu Feb 01 16:15:00 2007
Subject: RE: Bud Cummins

I don't think he should. How would he answer:

Did you resign voluntarily?
Were you told why you were being asked to resign?
Who told you?
When did they tell you?
What did they say?
Did you ever talk to Tim Griffin about his becoming U.S. Attorney?
What did Griffin say?
Did Griffin ever talk about being AG appointed and avoiding Senate confirmation?
Were you asked to resign because you were underperforming?
If not, then why?
Etc., etc.

-----Original Message-----

From: Elston, Michael (ODAG)
Sent: Thursday, February 01, 2007 3:52 PM
To: Hertling, Richard
Cc: Sampson, Kyle; Goodling, Monica; Moschella, William; McNulty, Paul J; Seidel, Rebecca
Subject: Bud Cummins

just called to let me know that Pryor's and Schumer's staff have called and asked him to testify on Tuesday. He declined, but wanted to know if we wanted him to testify -- would tell the truth about his circumstances and would also strongly support our view of S 214.

Thoughts?

Elston, Michael (ODAG)

From: Seidel, Rebecca
Sent: Thursday, February 01, 2007 6:47 PM
To: Moschella, William
Cc: Scott-Finan, Nancy; Hertling, Richard; Tracci, Robert N; Elston, Michael (ODAG)
Subject: RE: SJC hearing on USA issue - Intel

Elston was in my office earlier this afternoon and Nancy showed him the notebook she already has ready (has most of the info in it already) and it will be ready with 2 copies by 2pm tomorrow afternoon is our goal. We are pressing OMB to clear both the testimony and the views letter by then as well so they can be inserted in the binder too.

From: Moschella, William
Sent: Thursday, February 01, 2007 6:36 PM
To: Seidel, Rebecca
Cc: Scott-Finan, Nancy; Hertling, Richard; Tracci, Robert N; Elston, Michael (ODAG)
Subject: RE: SJC hearing on USA issue - Intel

Thanks. Elston's your man for that one.

I emailed Richard the other day and wanted to make sure we were getting two notebooks with:

1) all correspondence on this issue; 2) the major editorials on the subject; 3) all legislation introduced on this matter; and 4) any other info OLA deems pertinent.

From: Seidel, Rebecca
Sent: Thursday, February 01, 2007 6:12 PM
To: Elston, Michael (ODAG); Moschella, William; Sampson, Kyle; Goodling, Monica; Nowacki, John (USAEO)
Cc: Scott-Finan, Nancy; Hertling, Richard; Tracci, Robert N
Subject: SJC hearing on USA issue - Intel

Just spoke with Schumer's Chief counsel.

Other witnesses will be:

For the Dems:

Mary Jo White (you will recall she was NY USA under Clinton)

Laurie Levinson (former AUSA in Central D. of CA for many years, Bush and Clinton)

For the Rs:

Stuart Gerson

The DAG will have his own panel

Schumer staff asked for examples of problematic individuals that Judges have appointed since we have said this has been a problem in the past, we need to give examples.

P.s. Rob just received intel about an HJC hearing on the same subject -

Dems are planning a hearing on this subject before the Subcomm on Comm and Admin Law (which has oversight of U.S. Attnys) on Feb. 15.

No word about witnesses yet but certainly a senior DoJ person is likely to be requested.

Elston, Michael (ODAG)

From: Seidel, Rebecca
Sent: Friday, February 02, 2007 11:54 AM
To: Sampson, Kyle; Elston, Michael (ODAG)
Cc: Moschella, William
Subject: Re: (Partial) Passback: [AMS-110-15] JUSTICE Testimony on S.214 - the Preserving United States Attorney Independence Act of 2007

Thanks. Note Schumer staff asked for specific examples of where a judge appointed USA was a problem. Do we have that info? DAG needs to be prepared for that question, though I know sensitivity of personnel issues, hoping there are some high level comments we can make, ie is there a case where we needed a USA who already had security clearance, but a judge appointed one was foisted on us and consequently delayed handling of a case until security clearance finalized? (Maybe hard argument as our argument about our removing a USA we say won't disrupt case because AUSAs handle).

-----Original Message-----

From: Sampson, Kyle
To: Seidel, Rebecca; Blackwood, Kristine; Elston, Michael (ODAG)
CC: Moschella, William; Scott-Finan, Nancy
Sent: Fri Feb 02 11:48:43 2007
Subject: RE: (Partial) Passback: [AMS-110-15] JUSTICE Testimony on S.214 - the Preserving United States Attorney Independence Act of 2007

I don't think you need to; he posed them as suggestions. In sum: they were "how can we complain about judges appointing USAs when the President appoints judges".

-----Original Message-----

From: Seidel, Rebecca
Sent: Friday, February 02, 2007 11:47 AM
To: Sampson, Kyle; Blackwood, Kristine; Elston, Michael (ODAG)
Cc: Moschella, William; Scott-Finan, Nancy
Subject: Re: (Partial) Passback: [AMS-110-15] JUSTICE Testimony on S.214 - the Preserving United States Attorney Independence Act of 2007

He is in my immigration mtg with SJC Rs right now. I can discuss with him if someone can summarize his edits and our reasons for pushing back in text of email so I can read on bberry.

-----Original Message-----

From: Sampson, Kyle
To: Blackwood, Kristine; Elston, Michael (ODAG)
CC: Moschella, William; Scott-Finan, Nancy; Seidel, Rebecca
Sent: Fri Feb 02 11:41:58 2007
Subject: RE: (Partial) Passback: [AMS-110-15] JUSTICE Testimony on S.214 - the Preserving United States Attorney Independence Act of 2007

I disagree with, and would not accept, any of Braunstein's comments.

From: Blackwood, Kristine
Sent: Friday, February 02, 2007 11:31 AM
To: Elston, Michael (ODAG)
Cc: Moschella, William; Scott-Finan, Nancy; Seidel, Rebecca; Sampson, Kyle
Subject: FW: (Partial) Passback: [AMS-110-15] JUSTICE Testimony on S.214 - the Preserving United States Attorney Independence Act of 2007

Please see attached from OMB (the document with the notation "TFB comments"). Please note that Todd Braunstein's comments were on the first version we sent, not the one that we revised and sent OMB. So at least one of his edits has already been made (striking the "oddity" reference). Please advise. Thanks.

From: Simms, Angela M. [mailto:Angela_M_Simms@omb.eop.gov]
Sent: Friday, February 02, 2007 11:15 AM
To: Blackwood, Kristine
Cc: Green, Richard E.
Subject: (Partial) Passback: [AMS-110-15] JUSTICE Testimony on S.214 - the Preserving
United States Attorney Independence Act of 2007

Kristine,

Attached are comments from DPC staff regarding S.214. However, this is a partial passback. I am still waiting to hear from at least one more office before I can provide a complete passback. Please let me know Justice's response to the comments included in this e-mail.

Angie
202-395-3857

Elston, Michael (ODAG)

From: Scott-Finan, Nancy
Sent: Friday, February 02, 2007 1:04 PM
To: Hertling, Richard; Elston, Michael (ODAG); Moschella, William; Seidel, Rebecca; Tracci, Robert N; Sampson, Kyle; Goodling, Monica
Cc: Cabral, Catalina; Long, Linda E; Nowacki, John (USAEO)
Subject: RE: House Judiciary request for witness for hearing on USAs

Nowacki reports that the Committee has contacted Dan Bogden, the outgoing USA in Nevada, to testify. Bogden has not returned the call.

-----Original Message-----

From: Hertling, Richard
Sent: Friday, February 02, 2007 12:12 PM
To: Elston, Michael (ODAG); Scott-Finan, Nancy; Moschella, William; Seidel, Rebecca; Tracci, Robert N; Sampson, Kyle; Goodling, Monica
Cc: Cabral, Catalina; Long, Linda E
Subject: RE: House Judiciary request for witness for hearing on USAs

Someone from DOJ will need to testify. Mike, Will, either one of you? Mike Battle?

-----Original Message-----

From: Elston, Michael (ODAG)
Sent: Friday, February 02, 2007 12:03 PM
To: Scott-Finan, Nancy; Hertling, Richard; Moschella, William; Seidel, Rebecca; Tracci, Robert N; Sampson, Kyle; Goodling, Monica
Cc: Cabral, Catalina; Long, Linda E
Subject: Re: House Judiciary request for witness for hearing on USAs

I don't think the DAG should/will testify. He will be on the record after Tuesday. They can read the transcript.

-----Original Message-----

From: Scott-Finan, Nancy
To: Hertling, Richard; Elston, Michael (ODAG); Moschella, William; Seidel, Rebecca; Tracci, Robert N; Sampson, Kyle; Goodling, Monica
CC: Cabral, Catalina; Long, Linda E
Sent: Fri Feb 02 10:10:25 2007
Subject: House Judiciary request for witness for hearing on USAs

Eric Tamarkin, a D staffer for the Commercial and Administrative Law Subcommittee, called this morning to request the DAG as the Department's witness at their legislative hearing on February 15, at 10:30 am on the changes to the Patriot Act with regard to the interim appointment of US Attorneys. They have also requested a staff briefing prior to the hearing.

Elston, Michael (ODAG)

From: Chiara, Margaret M. (USAMIW) [MM.Chiara@usdoj.gov]
Sent: Saturday, February 03, 2007 1:39 PM
To: McNulty, Paul J
Cc: Elston, Michael (ODAG)
Subject: WDMI

Importance: High

Michael Elston telephoned on Friday afternoon with the welcome news that February 23 should be the date for announcing my resignation followed by a departure date of March 9. I appreciate the consideration.

Here's what I should have mentioned. I am the NAIS chair. Our first field-based meeting in over a year is scheduled on March 13 and 14 in North Carolina. Gretchen Shappert and the Eastern Band of Cherokee Indians are hosting the meeting and a tribal summit which will include 26 federally recognized tribes in the region. Secretary of the Interior Kempthorn is expected to attend. The NAIS staff detailee, who is from WDMI, was terminated despite an outstanding evaluation because EOUSA would not renew her detail. The replacement has not been announced nor will he be available to assist. It makes good sense for me to prepare, (which I have been doing), and chair the meeting. This is particularly true because 4 NAIS members are part of "the group" (Charlton, Bogden, McKay, Igelsias). It is better for me to handle this situation than an interim chair.

My resignation announcement continues to be on February 23; the departure date would be March 16. I trust that this minor adjustment for good cause is acceptable to you.

Margaret

Elston, Michael (ODAG)

From: Nowacki, John (USAEO) [John.Nowacki@usdoj.gov]

Sent: Monday, February 05, 2007 12:32 PM

To: Hertling, Richard; Scott-Finan, Nancy; Seidel, Rebecca; Goodling, Monica; Elston, Michael (ODAG); Battle, Michael (USAEO)

Subject: HJC hearing re USA's

Carol Lam (CA-S) says that she was contacted by House Judiciary (on Friday) and told that Rep. Conyers would like her to testify at the hearing. She said that she did not provide an answer.

Elston, Michael (ODAG)

From: Sampson, Kyle
Sent: Tuesday, February 06, 2007 5:48 PM
To: Scott-Finan, Nancy; Goodling, Monica; Elston, Michael (ODAG); Moschella, William; Hertling, Richard; Seidel, Rebecca; Battle, Michael (USAEO); Nowacki, John (USAEO)
Subject: RE: Next Hearing on replacement of the U.S. Attorneys

I just talked to the DAG and he prefers Moschella.

From: Scott-Finan, Nancy
Sent: Tuesday, February 06, 2007 4:19 PM
To: Sampson, Kyle; Goodling, Monica; Elston, Michael (ODAG); Moschella, William; Hertling, Richard; Seidel, Rebecca; Battle, Michael (USAEO); Nowacki, John (USAEO)
Subject: Next Hearing on replacement of the U.S. Attorneys

Have we come to a decision as to who will be the witness at the House Judiciary Subcommittee hearing? It has to be someone who can withstand 3 hours of questioning as Paul did this morning.

Elston, Michael (ODAG)

From: H.E. Cummins

Sent: Wednesday, February 07, 2007 5:19 PM

To: Elston, Michael (ODAG)

Mike,

Upon reflection, I would like to put the letter we discussed on hold until it is clear whether Tim Griffin is even going to actually be nominated. I am hearing "on the street" that he is saying he's not even willing to go through the process. If he intends to hold over without nomination and piss everyone off utilizing the now controversial Patriot Act provision, I prefer to stay out of it. If he is going to have to resign soon because he isn't going to be nominated, I would like to stay out of it also. Can anybody say for sure if he is going to be nominated and if so when? I am willing to try to help Tim, but I frankly can't see how it helps right now. If he isn't going to be nominated at all, why mess with it? See if you can confirm for me that he is going to be nominated.

Additionally, as predicted, my wife is strongly opposed to me writing on Tim's behalf, so I still have some work to do there before I can write a letter, but I will try to appease her concerns if we decide to go forward. She is understandably tired of all this and blames Tim quite a bit for getting the controversy started that led to all the hearings, etc.

Please be advised that the House Judiciary Committee contacted me today for the second time to invite me to their hearing. I gave the same answer as before, a polite declination of their invitation.

I am completely neutral on testifying, but if DOJ WANTS me to do it, I would probably do it. I think I could explain what has happened, why it isn't as bad as it seemed, etc. I am basically in accord with all the positions taken yesterday by the DAG. Of course, I don't have any facts about the other folks asked to step aside, so I have nothing to say there except they are my friends and I like them. They would at least see that I am still on the team.

When the Senate called and asked me to testify, I didn't want to come because I anticipated that I would be talking about being asked to resign and told it wasn't for cause and that would put DOJ on the spot because of the AG's prior position that every move was made to put a better person in place, etc. But now that the DAG has given a four square account of that part concerning me, I don't have any revelations to make. At this point the worst thing I might say is that it might have been handled better, but I have nothing to say about the decision itself. It isn't my call to make and I am sticking to that.

I would only be there to support the notion that I have no hard feelings, that I was likely to leave in 2006 or 2007 anyway, that we serve at the pleasure of the president, and that judges would screw up the interim appointment process. I am sure I could work in something about Tim Griffin's qualifications in a hearing. If I testified I don't think I could screw this up any worse than Tim and the White House have done--and it might help....DOJ's call.

Let me know if someone WANTS me to accept the invitation. Right now, I don't even know when the hearing is set and unless I hear from you and I call them back, I am out.

Call if you want to discuss any of this.

Bud

3/12/2007

DAG000000686

Bud Cummins

Don't pick lemons.
See all the new 2007 cars at Yahoo! Autos.

Elston, Michael (ODAG)

From: H.E. Cummins ;
Sent: Wednesday, February 07, 2007 5:22 PM
To: Scolinos, Tasia
Cc: Elston, Michael (ODAG)
Subject: letter

Tasia,

For reasons I laid out in more detail for Mike Elston separately, I would like to hold up on the letter. I am willing to keep working with you on it and might do it later.

Best regards,

Bud

Bud Cummins

Never miss an email again!
Yahoo! Toolbar alerts you the instant new Mail arrives. Check it out.

Elston, Michael (ODAG)

From: Elston, Michael (ODAG)
Sent: Thursday, February 08, 2007 12:15 AM
To: Chiara, Margaret M. (USAMIW)
Cc: McNulty, Paul J
Subject: Re: WDMI

Margaret:

I will certainly reconsider in light of this additional information, although I will say that the information I received from EOUSA about the meeting differs somewhat from yours.

I'll get back to you as soon as I can.

Thanks,
Mike

-----Original Message-----

From: Chiara, Margaret M. (USAMIW) <MM.Chiara@usdoj.gov>
To: Elston, Michael (ODAG)
CC: McNulty, Paul J
Sent: Wed Feb 07 17:59:16 2007
Subject: Re: WDMI

I will resign effective March 9. However, it is too late to postpone the meeting. Invitations have been extended to 26 Tribes and the host Tribe, (Eastern Band of Cherokees), has made extensive preparations for the tribal summit. To cancel now would be a setback to the government-to-government relations we work so hard to maintain. Also, the agenda for the rest of the meeting has been planned. We have a signed contract for the facility. Almost all of the NAIS members, including the 2 now in Arizona and Western Washington, have affirmed their participation. USA G. Shappert is the host USA. She, with some of the experienced members, can handle the event in my absence. This assignment has educated me to what it takes to work effectively in Indian Country. I ask that you reconsider the request to cancel. Margaret

Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Elston, Michael (ODAG) <Michael.Elston@usdoj.gov>
To: Chiara, Margaret M. (USAMIW) <MChiara@usa.doj.gov>
CC: McNulty, Paul J <Paul.J.McNulty@usdoj.gov>
Sent: Wed Feb 07 16:55:53 2007
Subject: Re: WDMI

Margaret:

I have looked into the NAIS meeting. Given the turnover on that subcommittee, I think it makes sense to postpone the meeting until the summer when the new USAs will be in place. Accordingly, let's leave the dates as the 23rd and the 9th.

Thank you for bringing the issue to my attention.

Mike

-----Original Message-----

From: Chiara, Margaret M. (USAMIW) <MM.Chiara@usdoj.gov>
To: McNulty, Paul J
CC: Elston, Michael (ODAG)
Sent: Sat Feb 03 13:39:28 2007
Subject: WDMI

Michael Elston telephoned on Friday afternoon with the welcome news that February 23 should be the date for announcing my resignation followed by a departure date of March 9. I appreciate the consideration.

Here's what I should have mentioned. I am the NAIS chair. Our first field-based meeting in over a year is scheduled on March 13 and 14 in North Carolina. Gretchen Shappert and the Eastern Band of Cherokee Indians are hosting the meeting and a tribal summit which will include 26 federally recognized tribes in the region. Secretary of the Interior Kempthorn is expected to attend. The NAIS staff detailee, who is from WDMI, was terminated despite an outstanding evaluation because EOUSA would not renew her detail. The replacement has not been announced nor will he be available to assist. It makes good sense for me to prepare, (which I have been doing), and chair the meeting. This is particularly true because 4 NAIS members are part of "the group" (Charlton, Bogden, McKay, Igelsias). It is better for me to handle this situation than an interim chair.

My resignation announcement continues to be on February 23; the departure date would be March 16. I trust that this minor adjustment for good cause is acceptable to you.

Margaret

Elston, Michael (ODAG)

From: Elston, Michael (ODAG)
Sent: Tuesday, February 06, 2007 4:29 PM
To: Hertling, Richard; Moschella, William
Subject: RE: Next Hearing on replacement of the U.S. Attorneys

Gee, I was going to at least break it to him face to face -- e-mail can be so impersonal in a situation like this!

-----Original Message-----

From: Hertling, Richard
Sent: Tuesday, February 06, 2007 4:28 PM
To: Moschella, William
Cc: Elston, Michael (ODAG)
Subject: Fw: Next Hearing on replacement of the U.S. Attorneys

I regret to say the DAG picked you to be the witness. Want to talk to him first before we out you?

-----Original Message-----

From: Scott-Finan, Nancy
To: Sampson, Kyle; Goodling, Monica; Elston, Michael (ODAG); Moschella, William; Hertling, Richard; Seidel, Rebecca; Battle, Michael (USAEO); Nowacki, John (USAEO)
Sent: Tue Feb 06 16:19:27 2007
Subject: Next Hearing on replacement of the U.S. Attorneys

Have we come to a decision as to who will be the witness at the House Judiciary Subcommittee hearing? It has to be someone who can withstand 3 hours of questioning as Paul did this morning.

Elston, Michael (ODAG)

From: Chiara, Margaret M. (USAMIW) [MM.Chiara@usdoj.gov]
Sent: Wednesday, February 07, 2007 5:59 PM
To: Elston, Michael (ODAG)
Cc: McNulty, Paul J
Subject: Re: WDMI

I will resign effective March 9. However, it is too late to postpone the meeting. Invitations have been extended to 26 Tribes and the host Tribe, (Eastern Band of Cherokeees), has made extensive preparations for the tribal summit. To cancel now would be a setback to the government-to-government relations we work so hard to maintain. Also, the agenda for the rest of the meeting has been planned. We have a signed contract for the facility. Almost all of the NAIS members, including the 2 now in Arizona and Western Washington, have affirmed their participation. USA G. Shappert is the host USA. She, with some of the experienced members, can handle the event in my absence. This assignment has educated me to what it takes to work effectively in Indian Country. I ask that you reconsider the request to cancel. Margaret

Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Elston, Michael (ODAG) <Michael.Elston@usdoj.gov>
To: Chiara, Margaret M. (USAMIW) <MChiara@usa.doj.gov>
CC: McNulty, Paul J <Paul.J.McNulty@usdoj.gov>
Sent: Wed Feb 07 16:55:53 2007
Subject: Re: WDMI

Margaret:

I have looked into the NAIS meeting. Given the turnover on that subcommittee, I think it makes sense to postpone the meeting until the summer when the new USAs will be in place. Accordingly, let's leave the dates as the 23rd and the 9th.

Thank you for bringing the issue to my attention.

Mike

-----Original Message-----

From: Chiara, Margaret M. (USAMIW) <MM.Chiara@usdoj.gov>
To: McNulty, Paul J
CC: Elston, Michael (ODAG)
Sent: Sat Feb 03 13:39:28 2007
Subject: WDMI

Michael Elston telephoned on Friday afternoon with the welcome news that February 23 should be the date for announcing my resignation followed by a departure date of March 9. I appreciate the consideration.

Here's what I should have mentioned. I am the NAIS chair. Our first field-based meeting in over a year is scheduled on March 13 and 14 in North Carolina. Gretchen Shappert and the Eastern Band of Cherokee Indians are hosting the meeting and a tribal summit which will include 26 federally recognized tribes in the region. Secretary of the Interior Kempthorn is expected to attend. The NAIS staff detailee, who is from WDMI, was terminated despite an outstanding evaluation because EOUSA would not renew her detail. The replacement has not been announced nor will he be available to assist. It makes good sense for me to prepare, (which I have been doing); and chair the meeting. This is particularly true because 4 NAIS members are part of "the group" (Charlton, Bogden, McKay, Igelsias). It is better for me to handle this situation than an interim chair.

My resignation announcement continues to be on February 23; the departure date would be March 16. I trust that this minor adjustment for good cause is acceptable to you.

Margaret

Elston, Michael (ODAG)

From: McNulty, Paul J
Sent: Friday, February 09, 2007 5:25 PM
To: Elston, Michael (ODAG)
Subject: FW: Solution

Could we make this happen? Hire her into an EOUSA slot and then send her down to the NAC?

From: Chiara, Margaret M. (USAMIW) [mailto:MM.Chiara@usdoj.gov]
Sent: Friday, February 09, 2007 1:55 PM
To: McNulty, Paul J
Subject: Solution

Paul: You may recall from earlier communication with me that I have owned a home in South Carolina for several years. The announcement (below) is for a detail at the NAC for which I am completely qualified and which I would enjoy doing. Obviously, I am not currently eligible for a detail position. Will you please intervene to make the position available for me? It would provide a timely and satisfactory solution to my current job search. Thank you.

Margaret

Experienced Prosecutor Needed to Serve as an Assistant Director, Office of Legal Education, EOUSA, Columbia, South Carolina

The Office of Legal Education (OLE), Executive Office for United States Attorneys, U.S. Department of Justice, seeks an experienced Assistant United States Attorney to serve as an Assistant Director (AD) for Criminal Programs at the National Advocacy Center in Columbia, South Carolina. This detail is for two years, with the possibility of renewal for additional years. **This is a reimbursable detail.**

The AD will lead a program manager and program assistant in coordinating up to 25 training classes per year at the National Advocacy Center in Columbia, SC. Responsibilities will include course design; instructor recruitment and training, student selection; course administration, and post-course review. The AD will report to OLE's Director and Deputy Director. Applicants must have excellent interpersonal and management skills, be responsible and self-sufficient, communicate effectively orally and in writing, possess extensive experience as a prosecutor in criminal law, and possess experience working with task forces or interagency projects.

The AD selected for this position will be housed in the Kirkland Apartment Building, directly across the street from the NAC, and will be entitled to one trip home each month.

Interested applicants should send a resume; cover letter; and letter of support from your U.S. Attorney to arrive as soon as possible but not later than **February 23, 2007**, addressed to Cammy Chandler, Deputy Director, Office of Legal Education, 1620 Pendleton Street, Columbia, SC 29201.

E-mail and fax submissions are also acceptable. Ms. Chandler's fax number is (803) 705-5110 and her e-

mail address is cammy.chandler@usdoj.gov

Elston, Michael (ODAG)

From: Elston, Michael (ODAG)
Sent: Friday, February 09, 2007 5:28 PM
To: Goodling, Monica
Subject: Fw: Solution

This idea may help us avoid linking this to the others. What do you think?

-----Original Message-----

From: McNulty, Paul J
To: Elston, Michael (ODAG)
Sent: Fri Feb 09 17:25:15 2007
Subject: FW: Solution

Could we make this happen? Hire her into an EOUSA slot and then send her down to the NAC?

From: Chiara, Margaret M. (USAMIW) [mailto:MM.Chiara@usdoj.gov]
Sent: Friday, February 09, 2007 1:55 PM
To: McNulty, Paul J
Subject: Solution

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E-mail and fax submissions are also acceptable. Ms. Chandler's fax number is (803) 705-5110 and her e-mail address is cammy.chandler@usdoj.gov
<<mailto:cammy.chandler@usdoj.gov>>

Elston, Michael (ODAG)

From: Goodling, Monica
Sent: Monday, February 12, 2007 7:32 PM
To: Elston, Michael (ODAG); Sampson, Kyle
Subject: Draft leave-behind chart

Attachments: US Attorney chart - leave-behind.doc

Mike – Here is the chart the DAG mentioned wanting to brief and leave behind. Kyle has reviewed it. Thanks.



US Attorney chart -
leave-behl...

U.S. ATTORNEY RESIGNATIONS & REPLACEMENTS

DISTRICT:	ACTING/INTERIM SELECTION:	STATUS OF POTENTIAL NOMINEE:
Dan Bodgen (NV) Term expired: Nov. 2, 2005 Called: Dec. 7, 2006 Resignation: Feb. 28, 2007	(FAUSA has declined to be acting USA due to his pending casework; identifying and interviewing other candidates)	Sen. Ensign will recommend potential candidates.
Paul Charlton (AZ) Term expired: Nov. 14, 2005 Called: Dec. 7, 2006 Resignation: Jan. 30, 2007	Chief AUSA Daniel Knauss was appointed interim USA: <ul style="list-style-type: none"> • 34 ½ years as a federal prosecutor. • 2 years as an adjunct law professor. 	Senators McCain and Kyl recommended one candidate; candidate was interviewed 1/16/07.
Margaret Chiara (WDMI) Term expired: Nov. 2, 2005 Called: Dec. 7, 2006 Resignation: Mar. 9, 2007 (NOT PUBLIC)	(Not yet interviewing, because vacancy is not public)	When USA Chiara announces her resignation, the Administration will seek recommendations of potential candidates from the WH-designated Republican lead.
David Iglesias (NM) Term expired: Oct. 17, 2005 Called: Dec. 7, 2006 Resignation: Feb. 28, 2007	(Interviewed two career prosecutors to date; decision pending)	Sen. Domenici has recommended potential candidates; interviews were held 1/17/07.
Carol Lam (SDCA) Term expired: Nov. 18, 2006 Called: Dec. 7, 2006 Resignation: Feb. 15, 2007	(Interviewed four career prosecutors to date; decision pending)	Parsky Commission will recommend potential candidates.
John McKay (WDWA) Term expired: Oct. 30, 2005 Called: Dec. 7, 2006 Resignation: Jan. 31, 2007	Criminal Chief Jeffrey Sullivan was appointed interim USA: <ul style="list-style-type: none"> • 27 years as a state/local prosecutor; • 5 years as a federal prosecutor; • 3 years in private practice. 	Rep. Reichert has recommended potential candidates; interviews were held 2/9/07.
Kevin Ryan (NDCA) Term expired: Aug. 2, 2006 Called: Dec. 7, 2006 Resignation: Feb. 16, 2007	(Identifying and interviewing qualified career prosecutors; decision pending)	Parsky Commission will recommend potential candidates.